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4

A Bill

SENATE BILL 750

5 By: Senators Luker, G. Baker, Burnett, L. Chesterfield, Crumbly, Elliott, Files, Fletcher, S. Harrelson, J.
6 Hutchinson, G. Jeffress, J. Jeffress, D. Johnson, M. Lamoureux, Laverty, Madison, P. Malone, B.
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8 By: Representatives Moore, Williams, Tyler, Webb
9

For An Act To Be Entitled

10 AN ACT TO BE KNOWN AS THE PUBLIC SAFETY IMPROVEMENT
11 ACT; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 TO IMPROVE PUBLIC SAFETY AND SLOW
15 CORRECTIONS GROWTH.
16
17
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. DO NOT CODIFY. Legislative intent.

23 The intent of this act is to implement comprehensive measures designed
24 to reduce recidivism, hold offenders accountable, and contain correction
25 costs.
26

27 SECTION 2. DO NOT CODIFY. Establishment of a study.

28 (a)(1) The Department of Community Correction shall conduct or
29 commission a thorough examination of the financial obligations incurred by
30 offenders in the Arkansas criminal justice system and the manner in which
31 these obligations are imposed and collected.

32 (2) The Department of Community Correction will:

33 (A)Both:

34 (i) Examine state and local laws and policies
35 pertaining to the ordering, collection, and distribution of court-ordered
36 restitution, fees and other charges in misdemeanor and felony criminal cases;



1 and

2 (ii) Review individual cases and practices.

3 (B) In examining the data collected under subdivision
4 (a)(2) of this section, the report shall include:

5 (i) The types of criminal convictions for which
6 restitution is ordered;

7 (ii) How frequently restitution orders are issued;

8 (iii) The rate at which the restitution is paid;

9 (iv) The methods used by law enforcement and by the
10 courts to ensure the restitution is paid;

11 (v) The existence of any collection gap between what
12 is ordered and what is actually paid;

13 (vi) The impact of child support obligations on the
14 overall financial obligations of the offender and the relationship and
15 relevance of child support to other financial obligations on the offender;
16 and

17 (vii) How each court prioritizes the collection of
18 the various financial obligations of offenders;

19 (C) Examine by judicial district the data collected under
20 this section; and

21 (D) Investigate other issues that the Department of
22 Community Correction finds relevant to the issues identified in this section.

23 (b) The data, findings, and conclusions of the study shall be
24 submitted in a report due December 31, 2012, to the House Judiciary
25 Committee, the Senate Judiciary Committee, the Administrative Office of the
26 Courts, and the Governor and shall include recommendations to improve the
27 system to ensure proper payment and justice for the victims of crime.

28
29 SECTION 3. Arkansas Code § 5-4-104(d)(2), regarding authorized
30 sentences, is amended to read as follows:

31 (d) A defendant convicted of an offense other than a Class Y felony,
32 capital murder, § 5-10-101, treason, § 5-51-201, or murder in the second
33 degree, § 5-10-103, may be sentenced to any one (1) or more of the following,
34 except as precluded by subsection (e) of this section:

35 (1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;

36 (2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-

1 306 – 16-93-314;

2 (3) Payment of a fine as authorized by §§ 5-4-201 – 5-4-203;

3 (4) Restitution as authorized by a provision of § 5-4-205; or

4 (5) Imprisonment and payment of a fine.

5
6 SECTION 4. Arkansas Code § 5-4-104(e)(1)(B), regarding authorized
7 sentences, is amended to read as follows:

8 (B)(i) In any other case, the court may suspend imposition of sentence
9 or place the defendant on probation, in accordance with §§ 5-4-301 – 5-4-307
10 and 16-93-306 – 16-93-314, except as otherwise specifically prohibited by
11 statute.

12 (ii) The court may not suspend execution of sentence.

13
14 SECTION 5. Arkansas Code § 5-4-105(a)(1), regarding expungement and
15 sealing options, is amended to read as follows:

16 (1) If no judgment of guilt is entered as a consequence of a plea of
17 guilty or nolo contendere, eligibility for an expungement or a sealing of the
18 records of the criminal prosecution is governed by ~~§ 5-4-311~~, § 5-64-413, ~~or~~
19 § 16-90-1301 et seq., §§ 16-93-301 – 16-93-303, or § 16-93-314; and
20

21 SECTION 6. Arkansas Code § 5-4-301(d)(2), regarding the imposition of
22 a sentence, is amended to read as follows:

23 (2) The entry of a judgment of conviction does not preclude:

24 (A) The modification of the original order suspending the
25 imposition of sentence on a defendant or placing a defendant on probation
26 following a revocation hearing held pursuant to ~~§ 5-4-310~~ § 16-93-307; and

27 (B) A modification set within the limits of ~~§§ 5-4-303, 5-4-304,~~
28 ~~and 5-4-306~~ § 16-93-309 and § 16-93-312.

29
30 SECTION 7. Arkansas Code § 5-4-303 is amended to read as follows:
31 5-4-303. Conditions of suspension or probation.

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

35 (b) The court shall provide as an express condition of every
36 suspension or probation that the defendant not commit an offense punishable

1 by imprisonment during the period of suspension or probation.

2 (c) If the court suspends imposition of sentence on a defendant or
 3 places him or her on probation, as a condition of its order the court may
 4 require that the defendant:

5 (1) Support his or her dependents and meet his or her family
 6 responsibilities;

7 (2) Work faithfully at suitable employment;

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

10 (4) Undergo available medical or psychiatric treatment and enter
 11 and remain in a specified institution when required for medical or
 12 psychiatric treatment;

13 (5) Participate in a community-based rehabilitative program or
 14 work-release program that ~~meets the minimum state standards for certification~~
 15 uses practices proven to reduce recidivism and for which the court may impose
 16 a reasonable fee or assessment on the defendant to be used in support of the
 17 community-based rehabilitative program or work-release program;

18 (6) Refrain from frequenting an unlawful or designated place or
 19 consorting with a designated person;

20 (7) Have no firearm in his or her possession;

21 (8) Make restitution to an aggrieved party in an amount the
 22 defendant can afford to pay for the actual loss or damage caused by his or
 23 her offense;

24 (9) Post a bond, with or without surety, conditioned on the
 25 performance of a prescribed condition; and

26 (10) Satisfy any other condition reasonably related to the
 27 rehabilitation of the defendant and not unduly restrictive of his or her
 28 liberty or incompatible with his or her freedom of conscience.

29 ~~(d) Following a revocation hearing held pursuant to § 5-4-310 and in~~
 30 ~~which a defendant has been found guilty or has entered a plea of guilty or~~
 31 ~~nolo contendere, the court may:~~

32 ~~(1) Continue the period of suspension of imposition of sentence~~
 33 ~~or continue the period of probation;~~

34 ~~(2) Lengthen the period of suspension or the period of probation~~
 35 ~~within the limits set by § 5-4-306;~~

36 ~~(3) Increase the fine within the limits set by § 5-4-201;~~

1 ~~(4) Impose a period of confinement within the limits set by § 5-~~
2 ~~4-304; or~~

3 ~~(5) Impose any conditions that could have been imposed in the~~
4 ~~original order.~~

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

7 (1) Report as directed to the court or the probation officer and
8 permit the probation officer to visit the defendant at the defendant's place
9 of employment or elsewhere;

10 (2) Remain within the jurisdiction of the court unless granted
11 permission to leave by the court or the probation officer; and

12 (3) Answer any reasonable inquiry by the court or the probation
13 officer and promptly notify the court or probation officer of any change in
14 address or employment.

15 ~~(f) Following a revocation hearing in which a defendant continues on a~~
16 ~~period of suspension or a period of probation, nothing prohibits the court~~
17 ~~upon finding the defendant guilty at a subsequent revocation hearing from:~~

18 ~~(1) Revoking the suspension or period of probation; and~~

19 ~~(2) Sentencing the defendant to incarceration in the Department~~
20 ~~of Correction.~~

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

25 ~~(h)~~~~(1)~~~~(A)~~(f)(1) If the court suspends imposition of sentence on a
26 defendant or places him or her on probation conditioned upon his or her
27 making restitution under subdivision (c)(8) of this section, the court, by
28 concurrence of the victim, defendant, and the prosecuting authority, shall
29 determine the amount to be paid as restitution.

30 ~~(B)~~(2) After considering the assets, financial condition,
31 and occupation of the defendant, the court shall further determine:

32 ~~(i)~~(A) Whether restitution shall be total or
33 partial;

34 ~~(ii)~~(B) The amounts to be paid if by periodic
35 payments; and

36 ~~(iii)~~(C) If a personal service is contemplated, the

1 reasonable value and rate of compensation for the personal service rendered
2 to the victim.

3 ~~(2) If the court has suspended imposition of sentence or placed~~
4 ~~a defendant on probation conditioned upon the defendant making restitution~~
5 ~~and the defendant has not satisfactorily made all of his or her payments when~~
6 ~~the probation period has ended, the court may:~~

7 ~~(A) Continue to assert the court's jurisdiction over the~~
8 ~~recalcitrant defendant; and~~

9 ~~(B) Either:~~

10 ~~(i) Extend the probation period as the court deems~~
11 ~~necessary; or~~

12 ~~(ii) Revoke the defendant's suspended sentence.~~

13 ~~(i)(1)(g)(1)~~ In a case in which counsel has been appointed to
14 represent a defendant due to the defendant's indigency and the court suspends
15 imposition of sentence or places a defendant on probation at the time of
16 disposition, the court shall revisit the issue of the defendant's indigency.

17 (2)(A) When appropriate and when the defendant is financially
18 able to do so, the court may assess an attorney's fee to be paid by the
19 defendant as part of his or her suspension or probation.

20 (B) The amount of the assessed attorney's fee ~~should~~ shall
21 be commensurate with the defendant's ability to pay.

22 (C) The assessed attorney's fee shall be paid to the state
23 as a means of partial reimbursement for providing appointed counsel.

24 (3) In no event is failure to pay an assessed attorney's fee,
25 standing alone, a ground for the revocation of a suspension or probation.

26 (4)(A) The assessed attorney's fee under subdivision ~~(i)(2)~~
27 (g)(2) of this section shall be collected by the county or city official,
28 agency, or department designated under § 16-13-709 as primarily responsible
29 for the collection of fines assessed in a circuit court or district court of
30 this state.

31 (B) On or before the tenth day of each month, the county
32 or city official, agency, or department described in subdivision ~~(i)(4)(A)~~
33 (g)(4)(A) of this section shall remit any assessed attorney's fee collected
34 to the Arkansas Public Defender Commission on a form provided by the
35 commission.

36 (C) The commission shall deposit the money collected into

1 a separate account within the State Central Services Fund to be known as
2 "Public Defender Attorney Fees" to be used solely to defray costs for the
3 commission.

4 ~~(j) If a court places a defendant on probation conditioned upon his or~~
5 ~~her paying supervision fees and the defendant has not satisfactorily made all~~
6 ~~of his or her payments when the probation period has ended, the court may:~~

7 ~~(1) Continue to assert the court's jurisdiction over the~~
8 ~~defendant; and~~

9 ~~(2) Extend the probation period as the court deems necessary.~~

10
11 SECTION 8. Arkansas Code § 5-4-304 is amended to read as follows:
12 5-4-304. Confinement as condition of suspension or probation.

13 (a) If a court suspends the imposition of sentence on a defendant or
14 places him or her on probation, the court may require as an additional
15 condition of its order that the defendant serve a period of confinement in
16 the county jail, city jail, or other authorized local ~~detentional~~ detention,
17 correctional, or rehabilitative facility at any time or consecutive or
18 nonconsecutive intervals within the period of suspension or probation as the
19 court shall direct.

20 (b) An order that the defendant serve a period of confinement as a
21 condition of suspension or probation is not deemed a sentence to a term of
22 imprisonment, and a court does not need to enter a judgment of conviction
23 before imposing a period of confinement as a condition of suspension or
24 probation.

25 ~~(c) Following a revocation hearing held pursuant to § 5-4-310 and in~~
26 ~~which a finding of guilt has been made or a defendant has entered a plea of~~
27 ~~guilty or nolo contendere, a court may add a period of confinement to be~~
28 ~~served during the period of suspension of imposition of sentence or period of~~
29 ~~probation.~~

30 ~~(d)(1)(A)~~ (c)(1)(A) The period actually spent in confinement pursuant
31 to this section in a county jail, city jail, or other authorized local
32 ~~detentional~~ detention, correctional, or rehabilitative facility shall not
33 exceed:

34 (i) One hundred twenty (120) days in the case of a
35 felony; or

36 (ii) Thirty (30) days in the case of a misdemeanor.

1 (B) In the case of confinement to a facility in the
 2 Department of Community Correction, the period actually spent in confinement
 3 under this section shall not exceed three hundred sixty-five (365) days.

4 (2) For purposes of this subsection, any part of a twenty-four-
 5 hour period spent in confinement constitutes a day of confinement.

6 ~~(e) If the suspension or probation of a defendant is subsequently~~
 7 ~~revoked and the defendant is sentenced to a term of imprisonment, the period~~
 8 ~~actually spent in confinement pursuant to this section shall be credited~~
 9 ~~against the subsequent sentence.~~

10
 11 SECTION 9. Arkansas Code § 5-4-306 is amended to read as follows:
 12 5-4-306. Time period generally —Modification.

13 ~~(a)(1)~~ If a court suspends imposition of sentence on a defendant or
 14 places him or her on probation, the period of suspension or probation shall
 15 be for a definite period of time not to exceed the maximum jail or prison
 16 sentence allowable for the offense charged.

17 ~~(2) The court may discharge the defendant at any time.~~

18 ~~(b) During a period of suspension or probation, upon the motion of a~~
 19 ~~probation officer or a defendant or upon the court's own motion, a court may:~~

20 ~~(1) Modify a condition imposed on the defendant;~~

21 ~~(2) Impose an additional condition authorized by § 5-4-303;~~

22 ~~(3) Impose an additional fine authorized by §§ 5-4-201 and 5-4-~~
 23 ~~303; or~~

24 ~~(4) Impose a period of confinement authorized by § 5-4-304.~~

25
 26 SECTION 10. Arkansas Code § 5-4-308 is repealed.

27 ~~5-4-308. Transfer of jurisdiction.~~

28 ~~(a) If a defendant during a period of probation goes from a county~~
 29 ~~where he or she is being supervised to another county, jurisdiction over the~~
 30 ~~defendant may be transferred in the discretion of the supervising court to a~~
 31 ~~court of comparable jurisdiction in the other county if the court in the~~
 32 ~~other county concurs.~~

33 ~~(b) If jurisdiction over a defendant is transferred pursuant to~~
 34 ~~subsection (a) of this section, the court in the county to which jurisdiction~~
 35 ~~is transferred has any power with respect to the defendant that was~~
 36 ~~previously possessed by the transferring court.~~

1 ~~(c) The procedure under this section may be repeated if a defendant~~
2 ~~goes from the county where he or she is being supervised to another county~~
3 ~~during the period of his or her probation.~~

4
5 SECTION 11. Arkansas Code § 5-4-309 is repealed.

6 ~~5-4-309. Violation of conditions—Arrest, revocation, and sentencing.~~

7 ~~(a)(1) At any time before the expiration of a period of suspension or~~
8 ~~probation, a court may summon a defendant to appear before it or may issue a~~
9 ~~warrant for the defendant's arrest.~~

10 ~~(2) The warrant may be executed by any law enforcement officer.~~

11 ~~(b) At any time before the expiration of a period of suspension or~~
12 ~~probation, any law enforcement officer may arrest a defendant without a~~
13 ~~warrant if the law enforcement officer has reasonable cause to believe that~~
14 ~~the defendant has failed to comply with a condition of his or her suspension~~
15 ~~or probation.~~

16 ~~(c) A defendant arrested for violation of suspension or probation~~
17 ~~shall be taken immediately before the court that suspended imposition of~~
18 ~~sentence, or if the defendant was placed on probation, before the court~~
19 ~~supervising the probation.~~

20 ~~(d) If a court finds by a preponderance of the evidence that the~~
21 ~~defendant has inexcusably failed to comply with a condition of his or her~~
22 ~~suspension or probation, the court may revoke the suspension or probation at~~
23 ~~any time prior to the expiration of the period of suspension or probation.~~

24 ~~(e) A finding of failure to comply with a condition of suspension or~~
25 ~~probation as provided in subsection (d) of this section, may be punished as~~
26 ~~contempt under § 16-10-108.~~

27 ~~(f) A court may revoke a suspension or probation subsequent to the~~
28 ~~expiration of the period of suspension or probation if before expiration of~~
29 ~~the period.~~

30 ~~(1) The defendant is arrested for violation of suspension or~~
31 ~~probation;~~

32 ~~(2) A warrant is issued for the defendant's arrest for violation~~
33 ~~of suspension or probation;~~

34 ~~(3) A petition to revoke the defendant's suspension or probation~~
35 ~~has been filed if a warrant is issued for the defendant's arrest within~~
36 ~~thirty (30) days of the date of filing the petition; or~~

1 ~~(4) The defendant has been:~~

2 ~~(A) Issued a citation in lieu of arrest under Rule 5 of~~
3 ~~the Arkansas Rules of Criminal Procedure for violation of suspension or~~
4 ~~probation; or~~

5 ~~(B) Served a summons under Rule 6 of the Arkansas Rules of~~
6 ~~Criminal Procedure for violation of suspension or probation.~~

7 ~~(g)(1)(A) If a court revokes a suspension or probation, the court may~~
8 ~~enter a judgment of conviction and may impose any sentence on the defendant~~
9 ~~that might have been imposed originally for the offense of which he or she~~
10 ~~was found guilty.~~

11 ~~(B) However, any sentence to pay a fine or of~~
12 ~~imprisonment, when combined with any previous fine or imprisonment imposed~~
13 ~~for the same offense, shall not exceed the limits of § 5-4-201 or § 5-4-401,~~
14 ~~or if applicable, § 5-4-501.~~

15 ~~(2)(A) As used in this subsection, "any sentence" includes the~~
16 ~~extension of a period of suspension or probation.~~

17 ~~(B) If an extension of suspension or probation is made~~
18 ~~upon revocation, the court is not deprived of the ability to revoke the~~
19 ~~suspension or probation again should the defendant's conduct warrant~~
20 ~~revocation again.~~

21
22 SECTION 12. Arkansas Code § 5-4-310 is repealed.

23 ~~5-4-310. Revocation hearings.~~

24 ~~(a)(1) A defendant arrested for violation of suspension or probation~~
25 ~~is entitled to a preliminary hearing to determine whether there is reasonable~~
26 ~~cause to believe that he or she has violated a condition of suspension or~~
27 ~~probation.~~

28 ~~(2) The preliminary hearing shall be conducted by a court having~~
29 ~~original jurisdiction to try a criminal matter as soon as practicable after~~
30 ~~arrest and reasonably near the place of the alleged violation or arrest.~~

31 ~~(3) The defendant shall be given prior notice of the:~~

32 ~~(A) Time and place of the preliminary hearing;~~

33 ~~(B) Purpose of the preliminary hearing; and~~

34 ~~(C) Condition of suspension or probation the defendant is~~
35 ~~alleged to have violated.~~

36 ~~(4) Except as provided in subsection (c) of this section, the~~

1 ~~defendant has the right to hear and controvert evidence against him or her~~
 2 ~~and to offer evidence in his or her own behalf.~~

3 ~~(5)(A) If the preliminary hearing court finds that there is~~
 4 ~~reasonable cause to believe that the defendant has violated a condition of~~
 5 ~~suspension or probation, it shall order the defendant held for further~~
 6 ~~revocation proceedings before the court that originally suspended imposition~~
 7 ~~of sentence on the defendant or placed him or her on probation.~~

8 ~~(B)(i) If the preliminary hearing court does not find~~
 9 ~~reasonable cause, it shall order the defendant released from custody.~~

10 ~~(ii) However, a release under subdivision~~
 11 ~~(a)(5)(B)(i) of this section does not bar the court that suspended imposition~~
 12 ~~of sentence on the defendant or placed him or her on probation from holding a~~
 13 ~~hearing on the alleged violation of suspension or probation or from ordering~~
 14 ~~that the defendant appear before it.~~

15 ~~(6) The preliminary hearing court shall prepare and furnish to~~
 16 ~~the court that suspended imposition of sentence on the defendant or placed~~
 17 ~~him or her on probation a summary of the preliminary hearing, including the~~
 18 ~~responses of the defendant and the substance of the documents and evidence~~
 19 ~~given in support of revocation.~~

20 ~~(b)(1) A suspension or probation shall not be revoked except after a~~
 21 ~~revocation hearing.~~

22 ~~(2) The revocation hearing shall be conducted by the court that~~
 23 ~~suspended imposition of sentence on the defendant or placed him or her on~~
 24 ~~probation within a reasonable period of time after the defendant's arrest,~~
 25 ~~not to exceed sixty (60) days.~~

26 ~~(3) The defendant shall be given prior written notice of the:~~

- 27 ~~(A) Time and place of the revocation hearing;~~
- 28 ~~(B) Purpose of the revocation hearing; and~~
- 29 ~~(C) Condition of suspension or probation the defendant is~~
 30 ~~alleged to have violated.~~

31 ~~(4) Except as provided in subsection (c) of this section, the~~
 32 ~~defendant has the right to:~~

- 33 ~~(A) Hear and controvert evidence against him or her;~~
- 34 ~~(B) Offer evidence in his or her own defense; and~~
- 35 ~~(C) Be represented by counsel.~~

36 ~~(5) If suspension or probation is revoked, the court shall~~

1 ~~prepare and furnish to the defendant a written statement of the evidence~~
2 ~~relied on and the reasons for revoking suspension or probation.~~

3 ~~(c) At a preliminary hearing pursuant to subsection (a) of this~~
4 ~~section or a revocation hearing pursuant to subsection (b) of this section:~~

5 ~~(1) The defendant has the right to confront and cross-examine an~~
6 ~~adverse witnesses unless the court specifically finds good cause for not~~
7 ~~allowing confrontation; and~~

8 ~~(2) The court may permit the introduction of any relevant~~
9 ~~evidence of the alleged violation, including a letter, affidavit, and other~~
10 ~~documentary evidence, regardless of its admissibility under the rules~~
11 ~~governing the admission of evidence in a criminal trial.~~

12 ~~(d) A preliminary hearing pursuant to subsection (a) of this section~~
13 ~~is not required if:~~

14 ~~(1) The defendant waives the preliminary hearing;~~

15 ~~(2) The revocation is based on the defendant's commission of an~~
16 ~~offense for which he or she has been tried and found guilty in an independent~~
17 ~~criminal proceeding; or~~

18 ~~(3) The revocation hearing pursuant to subsection (b) of this~~
19 ~~section is held promptly after the arrest and reasonably near the place where~~
20 ~~the alleged violation occurred or where the defendant was arrested.~~

21
22 SECTION 13. Arkansas Code § 5-4-311 is repealed.

23 ~~5-4-311. Discharge and dismissal.~~

24 ~~(a) If a judgment of conviction was not entered by the court at the~~
25 ~~time of suspension or probation and the defendant fully complies with the~~
26 ~~conditions of suspension or probation for the period of suspension or~~
27 ~~probation, the court shall discharge the defendant and dismiss any~~
28 ~~proceedings against him or her.~~

29 ~~(b)(1) Subject to the provisions of §§ 5-4-501—5-4-504, a person~~
30 ~~against whom proceedings are discharged or dismissed under subsection (a) of~~
31 ~~this section may seek to have the criminal record sealed, consistent with the~~
32 ~~procedures established in § 16-90-901 et seq.~~

33 ~~(2) This subsection does not apply if:~~

34 ~~(A) The person applying for discharge has been convicted~~
35 ~~of a sexual offense as defined by § 5-14-101 et seq.; and~~

36 ~~(B) The victim was under eighteen (18) years of age.~~

1
 2 SECTION 14. Arkansas Code Title 5, Chapter 4, Subchapter 3 is amended
 3 to add new sections to read as follows:

4 5-4-312. Presentence investigation – Placement in a community
 5 corrections program.

6 (a)(1) A court may require that either a presentence investigation be
 7 conducted by either the probation officer or presentence investigation
 8 officer assigned to the court or that the defense counsel of a defendant, the
 9 prosecuting attorney, a probation officer, and other persons whom the court
 10 believes have information relevant to the sentencing of the defendant submit
 11 to the court the information in writing prior to sentencing.

12 (2) The presentence investigation or information submitted by
 13 the persons described in subdivision (a)(1) of this section shall be
 14 forwarded with the commitment order to the circuit clerk and retained in the
 15 defendant’s case file.

16 (b) Upon determination by a court that a defendant is an eligible
 17 offender and that placement in a community correction program under § 16-93-
 18 1201 et seq. is proper, the court may:

19 (1)(A) Suspend the imposition of the sentence or place the
 20 defendant on probation, under § 5-4-104, § 5-4-201 et seq., §§ 5-4-301 – 5-4-
 21 307, and § 16-93-314.

22 (B) A sentence under subdivision (b)(1)(A) of this section
 23 may be accompanied by assignment to a community correction program under §
 24 16-93-1201 et seq. for a designated period of time commensurate with the
 25 goals of the community correction program assignment and the rules
 26 established by the Board of Corrections for the operation of community
 27 correction programs.

28 (C) The court shall maintain jurisdiction over the
 29 defendant sentenced under subdivision (b)(1)(A) of this section with
 30 supervision outside the confines of the specific programming provided by
 31 probation officers assigned to the court.

32 (D)(i) If a person sentenced under subdivision (b)(1)(A)
 33 of this section violates any term or condition of his or her sentence or term
 34 of probation, revocation of the sentence or term of probation shall be
 35 consistent with the procedures established by law for the revocation of
 36 suspended imposition of sentence or probation.

1 (ii) Upon revocation as described in subdivision
2 (b)(1)(D)(i) of this section, the court shall determine whether the defendant
3 shall remain under the jurisdiction of the court and be assigned to a more
4 restrictive community correction program, facility, or institution for a
5 period of time or committed to the Department of Correction.

6 (iii) If the defendant is committed to the
7 Department of Correction under subdivision (b)(1)(D)(ii) of this section, the
8 court shall specify if the commitment is for judicial transfer of the
9 offender to the Department of Community Correction or is a a commitment to
10 the Department of Correction; or

11 (2)(A) Commit the defendant to the custody of the Department of
12 Correction for judicial transfer to the Department of Community Correction
13 subject to the following:

14 (i) That the sentence imposed provides that the
15 defendant shall not serve more than two (2) years of confinement, with credit
16 for meritorious good time, with initial placement in a Department of
17 Community Correction facility; and

18 (ii) That the initial placement in the Department of
19 Community Correction facility is conditioned upon the defendant’s continuing
20 eligibility for Department of Community Correction placement and the
21 defendant’s compliance with all applicable rules established by the board for
22 community correction programs.

23 (B) Post-prison supervision of the defendant shall
24 accompany and follow the community correction program when appropriate.

25 (c) A defendant may not be excluded from placement in a community
26 correction program under this section based solely on the defendant’s
27 inability to speak, read, write, hear, or understand English.

28
29 5-4-313. Placement in a drug treatment program – Drug court
30 alternative.

31 If a judicial district has one (1) or more of the following programs in
32 place at the time of a defendant’s sentencing for a felony, a court may
33 sentence the defendant to:

34 (1) A posttrial treatment program for drug abuse under § 16-98-
35 201; or

36 (2) Drug court under the Arkansas Drug Court Act, § 16-98-301 et

1 seq.

2

3 SECTION 15. Arkansas Code § 5-4-323(c) is repealed.

4 ~~(c)(1) A court shall not revoke a suspension of sentence or probation~~
5 ~~because of a person's inability to achieve a high school diploma, general~~
6 ~~education development certificate, or gainful employment.~~

7 ~~(2) However, the court shall revoke a suspension of sentence or~~
8 ~~probation if the person fails to make a good faith effort to achieve a high~~
9 ~~school diploma, general education development certificate, or gainful~~
10 ~~employment.~~

11

12 SECTION 16. Arkansas Code § 5-4-323(d), regarding a good faith effort
13 for education or employment, is amended to read as follows:

14 ~~(d)(c)~~ “A good As used in this section, "Good faith effort” means a
15 person:

16 (1) Has been enrolled in a program of instruction leading to a
17 high school diploma or a general education development certificate and is
18 attending a school or an adult education course; or

19 (2) Is registered for employment and enrolled and participating
20 in an ~~employment training~~ employment-training program with the purpose of
21 obtaining gainful employment.

22

23 SECTION 17. Arkansas Code § 5-4-323(e), regarding a person's failure
24 to to make a good faith effort to comply with a court order, is amended to
25 read as follows:

26 ~~(e)(d)~~ Upon conviction, any A person who fails to make a good faith
27 effort to comply with a court order issued ~~pursuant to~~ under this section
28 upon conviction is guilty of a violation and shall be punished by a fine of
29 at least one hundred dollars (\$100) but not more than one thousand dollars
30 (\$1,000).

31

32 SECTION 18. Arkansas Code § 5-4-402(c), regarding the imprisonment of
33 felony offenders, is amended to read as follows:

34 (c) Except as provided in § 5-4-304 or § 16-93-708, a defendant
35 convicted of a felony violation of ~~§ 5-64-401~~ § 5-64-419 – § 5-64-442 and
36 sentenced to imprisonment shall be committed to the custody of the Department

1 of Correction for the term of his or her sentence or until released in
2 accordance with law.

3

4 SECTION 19. Arkansas Code § 5-4-501(c)(1), regarding the sentencing of
5 habitual offenders, is amended to read as follows:

6 (c)(1) Except as provided in subdivision (c)(3) of this section, a
7 defendant who is convicted of a serious felony involving violence enumerated
8 in subdivision (c)(2) of this section and who ~~has~~ previously has been
9 convicted of one (1) or more of the serious felonies involving violence
10 enumerated in subdivision (c)(2) of this section may be sentenced to pay any
11 fine authorized by law for the serious felony involving violence conviction
12 and shall be sentenced:

13 (A) To imprisonment for a term of not less than forty (40) years
14 nor more than eighty (80) years, or life; and

15 (B) Without eligibility for parole or community correction
16 transfer except under ~~§ 16-93-1302~~ § 16-93-615.

17

18 SECTION 20. The introductory language of Arkansas Code § 5-4-
19 501(d)(1), regarding the sentencing of habitual offenders, is amended to read
20 as follows:

21 (d)(1) A defendant who is convicted of a felony involving violence
22 enumerated in subdivision (d)(2) of this section and who previously has
23 ~~previously~~ been convicted of two (2) or more of the felonies involving
24 violence enumerated in subdivision (d)(2) of this section may be sentenced to
25 pay any fine authorized by law for the felony involving violence conviction
26 and shall be sentenced to an extended term of imprisonment without
27 eligibility for parole or community correction transfer except under ~~§ 16-93-~~
28 ~~1302~~ § 16-93-615 as follows:

29

30 SECTION 21. Arkansas Code Title 5, Chapter 4 is amended to create a
31 new subchapter to read as follows:

32 Subchapter 8 – Sentencing Alternative - Community Service Work
33 5-4-801. Definitions.

34 As used in this subchapter:

35 (1) “Community work project” means any program in which an eligible
36 offender in a county jail is allowed to work under the supervision of a

1 government entity on projects on public lands, public buildings, public
 2 roads, public parks, and public rights-of-way designed to benefit the
 3 government entity supervising the eligible offender;

4 (2) "Eligible offender" means any person convicted of a misdemeanor
 5 offense or felony offense other than:

6 (A) Capital murder, § 5-10-101;

7 (B) Murder in the first degree, § 5-10-102;

8 (C) Murder in the second degree, § 5-10-103;

9 (D) Manslaughter, § 5-10-104;

10 (E) Rape, § 5-14-103;

11 (F) Kidnapping, § 5-11-102;

12 (G) Aggravated robbery, § 5-12-103;

13 (H) Driving while intoxicated, second or subsequent offense, §
 14 5-65-103;

15 (I) Negligent homicide, § 5-10-105;

16 (J) Trafficking a controlled substance, § 5-64-440;

17 (K) Any felony involving violence as listed under § 5-4-
 18 501(d)(2); or

19 (L) Any offense requiring registration under the Sex Offender
 20 Registration Act of 1997, § 12-12-901, et seq.

21 (3) "Work incentive credit" means a sentence credit of up to three (3)
 22 days as designated by the court toward completion of an eligible offender's
 23 sentence for each day the eligible offender works on a community work
 24 project.

25
 26 5-4-802. Rules.

27 The Board of Corrections shall promulgate necessary rules to be
 28 followed by a government entity in the supervision of eligible offenders
 29 utilized under this subchapter.

30
 31 5-4-803. Procedure.

32 (a) A court may sentence an eligible offender under this subchapter.

33 (b)(1) If a court elects to sentence an eligible offender under this
 34 subchapter, the court may suspend imposition of sentence for the eligible
 35 offender for a period not to exceed the period of years that is the maximum
 36 penalty for the offense for which convicted upon condition that the eligible

1 offender be incarcerated in a county jail or regional jail to participate in
2 a community work project.

3 (2) In order for the eligible offender to participate in a
4 community work project, space must be available in the county jail or
5 regional jail as certified by the county sheriff to the Department of
6 Correction for an eligible offender committed to the department or to the
7 court for an eligible offender serving time for a misdemeanor offense.

8 (3) The length of the community work project service and
9 incarceration shall not exceed eighteen (18) months for a felony offense with
10 work incentive credit or, in the case of a misdemeanor offense, the maximum
11 length of incarceration for the misdemeanor offense reduced by the work
12 incentive credit.

13 (c)(1) If an eligible offender sentenced under this subchapter
14 withdraws consent to participate in a community work project, then:

15 (A) The county sheriff shall notify the court and bring
16 the eligible offender before the court within a reasonable time; and

17 (B) The court shall determine whether the eligible
18 offender has withdrawn consent to participate in a community work project.

19 (2) If the court finds that the eligible offender has withdrawn
20 consent to participate in the community work project, the court shall remand
21 the eligible offender for the remaining portion of the eligible offender's
22 sentence to the:

23 (A) Department of Correction for a felony offense; or

24 (B) County sheriff for a misdemeanor offense.

25 (3) If an eligible offender withdraws consent to participate in
26 a community work project, the eligible offender is entitled to all good time
27 and parole eligibility considerations as provided by law.

28 (4) Any portion of the sentence that was suspended by the court
29 at the time of the original sentence is not affected by the removal of an
30 eligible offender from participating in the community work project.

31 (d)(1) If an eligible offender's conduct while participating in a
32 community work project is unsatisfactory, upon petition filed by the
33 prosecuting attorney, the court may schedule a hearing to determine if the
34 eligible offender should be allowed to continue to participate in the
35 community work project.

36 (2) A hearing under this subsection shall follow the same format

1 and accord the eligible offender the same safeguards as the revocation
2 procedure in § 16-93-307.

3 (3) The burden of proof necessary for revocation of a sentence
4 under this subchapter shall be a preponderance of the evidence that the
5 eligible offender’s conduct has been unsatisfactory while participating in a
6 community work project.

7 (4) If the court finds that the eligible offender’s conduct has
8 been unsatisfactory while performing in a community work project, the court
9 shall remand the eligible offender for the remaining portion of the eligible
10 offender’s sentence to the:

- 11 (A) Department of Correction for a felony offense; or
- 12 (B) County sheriff for a misdemeanor offense.

13 (5) If an eligible offender’s conduct is found to be
14 unsatisfactory, the eligible offender is entitled to all good time and parole
15 eligibility considerations as provided by law.

16
17 5-4-804. Medical treatment and costs.

18 The state is responsible for the cost of medical treatment approved by
19 the Department of Correction of an eligible offender sentenced to a felony
20 under this subchapter if the medical treatment is for:

21 (1) The result of an injury sustained on the work site of the
22 community work project or during transportation to and from the work site by
23 a government entity; or

24 (2)(A) The result of illness or an injury sustained by an
25 eligible offender committed to the county jail or regional jail and who is
26 assigned to a community work project.

27 (B) The Department of Correction may transfer an eligible
28 offender committed to a county jail or regional jail under this subchapter to
29 a medical facility or treatment facility, including a facility of the
30 Department of Correction, it deems appropriate for the medical treatment.

31 (3) Nothing in this section precludes the Arkansas Department of
32 Correction from seeking reimbursement or damages from a person or entity that
33 contributes to or causes the injury or illness referred to in this section.

34
35 5-4-805. Reimbursement for housing eligible offenders.

36 The state shall reimburse a county for housing an eligible offender

1 convicted of a felony offense and sentenced under this subchapter at a rate
 2 to be determined by the Board of Corrections.

3
 4 SECTION 22. Arkansas Code § 5-10-101(c), regarding the disposition of
 5 the offense of capital murder, is amended to read as follows:

6 (c)(1) Capital murder is punishable by death or life imprisonment
 7 without parole ~~pursuant to~~ under §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608.

8 (2) For any purpose other than disposition under §§ 5-4-101 – 5-4-104,
 9 5-4-201 – 5-4-204, 5-4-301 – ~~5-4-308~~ 5-4-307, ~~5-4-310, 5-4-311,~~ 5-4-401 – 5-
 10 4-404, 5-4-501 – 5-4-504, 5-4-601 – 5-4-605, 5-4-607, ~~and~~ 5-4-608, 16-93-307,
 11 16-93-313, and 16-93-314 capital murder is a Class Y felony.

12
 13 SECTION 23. Arkansas Code § 5-36-103 is amended to read as follows:
 14 5-36-103. Theft of property.

15 (a) A person commits theft of property if he or she knowingly:

16 (1) Takes or exercises unauthorized control over, or makes an
 17 unauthorized transfer of an interest in, the property of another person, with
 18 the purpose of depriving the owner of the property; or

19 (2) Obtains the property of another person, by deception or by
 20 threat, with the purpose of depriving the owner of the property.

21 (b) Theft of property is a:

22 (1) Class B felony if:

23 (A) The value of the property is ~~two thousand five hundred~~
 24 ~~dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) or more;

25 (B) The property is obtained by the threat of serious
 26 physical injury to any person or destruction of the occupiable structure of
 27 another person;

28 (C) The property is obtained by threat, and the actor
 29 stands in a confidential or fiduciary relationship to the person threatened;
 30 or

31 (D) The property is:

32 (i) Anhydrous ammonia in any form; or

33 (ii) A product containing any percentage of
 34 anhydrous ammonia in any form;

35 ~~(E)(i) The property is building material obtained from a~~
 36 ~~permitted construction site and the value of the building material is five~~

1 ~~hundred dollars (\$500) or more.~~

2 ~~(ii) As used in subdivision (b)(1)(E)(i) of this~~
3 ~~section.~~

4 ~~(a) "Building material" means lumber, a~~
5 ~~construction tool, a window, a door, copper tubing or wire, or any other~~
6 ~~material or good used in the construction or rebuilding of a building or a~~
7 ~~structure; and~~

8 ~~(b) "Permitted construction site" means the~~
9 ~~site of construction, alteration, painting, or repair of a building or a~~
10 ~~structure for which a building permit has been issued by a city of the first~~
11 ~~class, a city of the second class, an incorporated town, or a county; or~~

12 ~~(F) The value of the property is five hundred dollars~~
13 ~~(\$500) or more and the theft occurred in an area declared to be under a state~~
14 ~~of emergency pursuant to proclamation by the President of the United States,~~
15 ~~the Governor, or the executive officer of a city or county;~~

16 (2) Class C felony if:

17 (A) The value of the property is less than ~~two thousand~~
18 ~~five hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) but more
19 than ~~five hundred dollars (\$500)~~ five thousand dollars (\$5,000);

20 (B) The property is obtained by threat; or

21 (C) The property is a firearm valued at ~~less than two~~
22 ~~thousand five hundred dollars (\$2,500)~~ or more;

23 ~~(D) The property is a:~~

24 ~~(i) Credit card or credit card account number; or~~

25 ~~(ii) Debit card or debit card account number;~~

26 ~~(E) The property is livestock and the value of the~~
27 ~~livestock is in excess of two hundred dollars (\$200); or~~

28 ~~(F) The value of the property is at least one hundred~~
29 ~~dollars (\$100) but less than five hundred dollars (\$500) and the theft~~
30 ~~occurred in an area declared to be under a state of emergency pursuant to~~
31 ~~proclamation by the President of the United States, the Governor, or the~~
32 ~~executive officer of a city or county;~~

33 (D)(i) The property is building material obtained from a
34 permitted construction site and the value of the building material is five
35 hundred dollars (\$500) or more.

36 (ii) As used in subdivision (b)(2)(D)(i) of this

1 section:

2 (a) "Building material" means lumber, a
3 construction tool, a window, a door, copper tubing or wire, or any other
4 material or good used in the construction or rebuilding of a building or a
5 structure; and

6 (b) "Permitted construction site" means the
7 site of construction, alteration, painting, or repair of a building or a
8 structure for which a building permit has been issued by a city of the first
9 class, a city of the second class, an incorporated town, or a county; or

10 (E) The value of the property is five hundred dollars
11 (\$500) or more and the theft occurred in an area declared to be under a state
12 of emergency pursuant to proclamation by the President of the United States,
13 the Governor, or the executive officer of a city or county;

14 (3)~~(A)~~ Class D felony if:

15 ~~(i)~~(A) The value of the property is five hundred thousand
16 dollars ~~(\$500)~~ (\$5,000) or less but more than one thousand dollars (\$1,000);
17 and

18 ~~(ii) The property was unlawfully obtained during a~~
19 ~~criminal episode.~~

20 ~~(B) As used in subdivision (b)(3)(A)(ii) of this section,~~
21 ~~"criminal episode" means a series of thefts committed by the same person on~~
22 ~~three (3) or more occasions within three (3) days; or~~

23 (B) The property is a firearm valued at two thousand five
24 hundred dollars (\$2,500) or less;

25 (C) The property is a:

26 (i) Credit card or credit card account number; or

27 (ii) Debit card or debit card account number;

28 (D) The value of the property is at least one hundred
29 dollars (\$100) or more but less than five hundred dollars (\$500) and the
30 theft occurred in an area declared to be under a state of emergency pursuant
31 to proclamation by the President of the United States, the Governor, or the
32 executive officer of a city or county; or

33 (E) The property is livestock and the value of the
34 livestock is in excess of two hundred dollars (\$200); or

35 (4) Class A misdemeanor if:

36 (A) The value of the property is ~~five hundred dollars~~

1 ~~(\$500)~~ one thousand dollars (\$1,000) or less; or

2 (B) The property has inherent, subjective, or
3 idiosyncratic value to its owner or possessor even if the property has no
4 market value or replacement cost.

5 (c)(1) Upon the proclamation of a state of emergency by the President
6 of the United States or the Governor or upon the declaration of a local
7 emergency by the executive officer of any city or county and for a period of
8 thirty (30) days following that declaration, the penalty for theft of
9 property is enhanced if the property is:

10 (A) A generator intended for use by:

- 11 (i) A public facility;
- 12 (ii) A nursing home or hospital;
- 13 (iii) An airport;
- 14 (iv) A public safety device;
- 15 (v) A communication tower or facility;
- 16 (vi) A public utility;
- 17 (vii) A water system or sewer system;
- 18 (viii) A public safety agency; or
- 19 (ix) Any other facility or use providing a vital

20 service; or

21 (B) Any other equipment used in the transmission of
22 electric power or telephone service.

23 (2) As used in this subsection:

24 (A) "Public safety agency" means an agency of the State of
25 Arkansas or a functional division of a political subdivision that provides:

- 26 (i) Firefighting and rescue;
- 27 (ii) Natural or man-caused disaster or major
28 emergency response;

- 29 (iii) Law enforcement; or
- 30 (iv) Ambulance or emergency medical services; and

31 (B) "Public safety device" includes, but is not limited
32 to, a traffic signaling device or a railroad crossing device.

33 (3) The penalty is enhanced as follows:

34 (A)(i) The fine for the offense shall be at least five
35 thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).

36 (ii) The fine is mandatory; and

1 (B) The offense is a Class D felony if it would have been
2 a Class A misdemeanor.

3
4 SECTION 24. Arkansas Code § 5-36-104(c), regarding the threshold
5 amounts for theft of services, is amended to read as follows:

6 (c) Theft of services is a:

7 (1) Class B felony if:

8 (A) The value of the service is ~~two thousand five hundred~~
9 ~~dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) or more;

10 (B) The service is obtained by the threat of serious
11 physical injury to any person or destruction of the occupiable structure of
12 another person;

13 (C) The service is obtained by threat, and the actor
14 stands in a confidential or fiduciary relationship to the person threatened;
15 or

16 (D) The theft of services involves a theft of a utility
17 service that results in:

18 (i) Any contamination of a ~~lines~~ line, pipe,
19 waterline, meter, or other utility property; or

20 (ii) A spill, dumping, or release of any hazardous
21 material into the environment;

22 (2) Class C felony if:

23 (A) The value of the service is less than ~~two thousand~~
24 ~~five hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) but more
25 than ~~five hundred dollars (\$500)~~ five thousand dollars (\$5,000); or

26 (B) The service is obtained by threat; or

27 (3) Class D felony if the value of the service is five thousand
28 dollars (\$5,000) or less but more than one thousand dollars (\$1,000); or

29 ~~(3)(4)~~ (4) Class A misdemeanor if the theft of services:

30 ~~(A) Involves~~ involves a theft of a utility service that
31 results in the destruction or damage to a line, pipe, waterline, meter, or
32 any other property of the utility ~~of less than five hundred dollars (\$500) in~~
33 ~~value; or~~

34 ~~(B) Is otherwise committed.~~

35
36 SECTION 25. Arkansas Code § 5-36-106(e), regarding the threshold theft

1 amounts for theft by receiving, is amended to read as follows:

2 (e) Theft by receiving is a:

3 (1) Class B felony if the value of the property is ~~two thousand~~
 4 ~~five hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) or more;

5 (2) Class C felony if the value of the property is less than
 6 twenty-five thousand dollars (\$25,000) but more than five thousand dollars
 7 (\$5,000);

8 ~~(2)(3)~~ Class D felony if:

9 (A) The value of the property is ~~less than two thousand~~
 10 ~~five hundred dollars (\$2,500)~~ five thousand dollars (\$5,000) or less but more
 11 than ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000);

12 (B) The property is a:

13 (i) Credit card or credit card account number; or

14 (ii) Debit card or debit card account number; or

15 ~~(C) The property is a firearm valued at less than two~~
 16 ~~thousand five hundred dollars (\$2,500); or~~

17 ~~(3)(4)~~ Class A misdemeanor if otherwise committed.

18
 19 SECTION 26. Arkansas Code § 5-36-303 is amended to read as follows:

20 5-36-303. Theft of wireless service.

21 (a) A person commits the offense of theft of wireless service if he or
 22 she ~~intentionally~~ purposely obtains wireless service by the use of an
 23 unlawful wireless device or without the consent of the wireless service
 24 provider.

25 (b) Theft of wireless service is a:

26 (1) Class A misdemeanor if the aggregate value of wireless
 27 service obtained is ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000)
 28 or less;

29 (2) ~~Class C~~ Class D felony if the:

30 (A) Aggregate value of wireless service obtained is ~~more~~
 31 ~~than five hundred dollars (\$500)~~ five thousand dollars (\$5,000) or less but
 32 ~~less more~~ than ~~two thousand five hundred dollars (\$2500)~~ one thousand dollars
 33 (\$1,000); or

34 (B) Stolen wireless service is used to communicate a
 35 threat of damage or injury by bombing, fire, or other means, in a manner
 36 likely to:

1 (i) Place another person in reasonable apprehension
2 of physical injury to himself or herself or another person or of damage to
3 his or her property or to the property of another person; or

4 (ii) Create a public alarm; ~~or~~

5 (3) ~~Class B~~ Class C felony if the:

6 (A) Aggregate value of wireless service is ~~two thousand~~
7 ~~five hundred dollars (\$2500)~~ more than five thousand dollars (\$5,000) or more
8 but less than twenty-five thousand dollars (\$25,000);

9 (B) Conviction is for a second or subsequent offense; or

10 (C) Person convicted of the offense has been previously
11 convicted of any similar crime in this or any other state or federal
12 jurisdiction; or

13 (4) Class B felony if the aggregate value of the wireless
14 service is twenty-five thousand dollars (\$25,000) or more.

15
16 SECTION 27. Arkansas Code § 5-37-207(b), regarding threshold amounts
17 for fraudulent use of a credit card or debit card, is amended to read as
18 follows:

19 (b) Fraudulent use of a credit card or debit card is a:

20 ~~(1) Class C felony if the value of all moneys, goods, or~~
21 ~~services obtained during any six-month period exceeds one hundred dollars~~
22 ~~(\$100); or~~

23 ~~(2) Class A misdemeanor if otherwise committed.~~

24 (1) Class B felony if the value of all moneys, goods, or
25 services obtained during any six-month period is twenty five thousand dollars
26 (\$25,000) or more;

27 (2) Class C felony if the value of all moneys, goods, or
28 services obtained during any six-month period is less than twenty five
29 thousand dollars (\$25,000) but more than five thousand dollars (\$5,000);

30 (3) Class D felony if the value of all moneys, goods, or
31 services obtained during any six-month period is five thousand dollars
32 (\$5,000) or less but more than one thousand dollars (\$1,000); or

33 (4) Class A misdemeanor if the value of all moneys, goods, or
34 services obtained during any six-month period is one thousand dollars
35 (\$1,000) or less.

SECTION 28. Arkansas Code § 5-37-305 is amended to read as follows:
 5-37-305. Penalties.

(a) Upon a determination of guilt of a person under § 5-37-302, in the event that the order, draft, check, or other form of presentment involving the transmission of account information is ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) or less, the penalties shall be as follows:

(1) ~~First Offense.~~ For a first offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or imprisonment in the county jail or regional detention facility not to exceed thirty (30) days, or both;

(2) ~~Second Offense.~~ For a second offense, the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisonment in the county jail or regional detention facility not to exceed ninety (90) days, or both; and

(3) ~~Third and Subsequent Offenses.~~ For a third or subsequent offense the person is guilty of an unclassified misdemeanor and shall receive a fine of not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) or imprisonment in the county jail or regional detention facility not to exceed one (1) year, or both.

(b)(1) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on a nonexistent account is a Class B felony if:

(A) The amount of any one (1) instrument or transaction is ~~two thousand five hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) or more; or

(B) More than one (1) instrument or transaction has been drawn within a ninety-day ~~period, and each period,~~ each instrument or transaction is in an amount less than ~~two thousand five hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000), and the total amount of all such instruments or transactions is ~~two thousand five hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) or more.

(2) Making, uttering, or delivering one (1) or more instruments or transactions drawn on insufficient funds or drawn on nonexistent accounts is a Class C felony if:

1 (A) The amount of any one (1) instrument or transaction is
2 less than ~~two thousand five hundred dollars (\$2,500)~~ twenty-five thousand
3 dollars (\$25,000) but more than ~~five hundred dollars (\$500)~~ five thousand
4 dollars (\$5,000); or

5 (B) More than one (1) instrument or transaction has been
6 drawn within a ninety-day period, each instrument or transaction is in an
7 amount less than ~~five hundred dollars (\$500)~~ twenty-five thousand dollars
8 (\$25,000) but more than five thousand dollars (\$5,000), and the total amount
9 of all such instruments or transactions is less than ~~two thousand five~~
10 ~~hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) but more than
11 ~~five hundred dollars (\$500)~~ five thousand dollars (\$5,000).

12 (3) Making, uttering, or delivering one (1) or more instruments
13 or transactions drawn on insufficient funds or drawn on nonexistent accounts
14 is a Class D felony if:

15 (A) The amount of any one (1) instrument or transaction is
16 five thousand dollars (\$5,000) or less but more than one thousand dollars
17 (\$1,000); or

18 (B) More than one (1) instrument or transaction has been
19 drawn within a ninety-day period, each instrument or transaction is in an
20 amount of five thousand dollars (\$5,000) or less but more than one thousand
21 dollars (\$1,000), and the total amount of all such instruments or
22 transactions is five thousand dollars (\$5,000) or less but more than one
23 thousand dollars (\$1,000).

24 (4) Making, uttering, or delivering one (1) or more instruments
25 or transactions drawn on insufficient funds or drawn on nonexistent accounts
26 is a Class A misdemeanor if:

27 (A) The amount of any one (1) instrument or transaction is
28 one thousand dollars (\$1,000) or less; or

29 (B) More than one (1) instrument or transaction has been
30 drawn within a ninety-day period, each instrument or transaction is in an
31 amount of one thousand dollars (\$1,000) or less, and the total amount of all
32 such instruments or transactions is one thousand dollars (\$1,000) or less.

33 ~~(3)~~(5) Under subdivisions (b)(1)(B) and (b)(2)(B) of this
34 section, each instrument or transaction may be added together in a single
35 prosecution.

36 (c)(1) Any court passing sentence upon a person convicted of any

1 offense, pursuant to a provision of under §§ 5-37-301 – 5-37-306, may also
2 order the person to make full restitution to the plaintiff or complaining
3 party.

4 (2) All court costs may be taxed to the convicted defendant.

5
6 SECTION 29. Arkansas Code § 5-38-203(b), regarding threshold amounts
7 for first-degree criminal mischief, is amended to read as follows:

8 (b) Criminal mischief in the first degree is a:

9 (1) ~~Class C felony~~ Class A misdemeanor if the amount of actual
10 damage is ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) or less
11 ~~or more; or~~

12 (2) ~~Class A misdemeanor if otherwise committed~~ Class D felony if
13 the amount of actual damage is more than one thousand dollars (\$1,000) but
14 five thousand dollars (\$5,000) or less;

15 (3) Class C felony if the amount of actual damage is more than
16 five thousand dollars (\$5,000) but less than twenty-five thousand dollars
17 (\$25,000); or

18 (4) Class B felony if the amount of actual damage is twenty-five
19 thousand dollars (\$25,000) or more.

20
21 SECTION 30. Arkansas Code § 5-38-204(b), regarding threshold amounts
22 for second-degree criminal mischief, is amended to read as follows:

23 (b) Criminal mischief in the second degree is a:

24 (1) ~~Class D felony~~ A misdemeanor if the amount of actual damage
25 is ~~two one thousand five hundred dollars (\$2,500)~~ (\$1,000) or more but less
26 than five thousand dollars (\$5,000);

27 (2) ~~Class A misdemeanor~~ D felony if the amount of actual damage
28 is ~~one thousand dollars (\$1,000) or more but less than two thousand five~~
29 ~~hundred dollars (\$2,500)~~ five thousand dollars (\$5,000) or more; or

30 (3) Class B misdemeanor if otherwise committed.

31
32 SECTION 31. Arkansas Code § 5-51-201(d), regarding the disposition of
33 the crime of treason, is amended as follows:

34 (d) For all purposes other than disposition under §§ 5-4-101 – 5-4-
35 104, 5-4-201 – 5-4-204, 5-4-301 – ~~5-4-309~~ 5-4-307, ~~5-4-311~~, 5-4-401 – 5-4-
36 404, 5-4-501 – 5-4-504, 5-4-601 – 5-4-605, 5-4-607, ~~and~~ 5-4-608, 16-93-307,

1 16-93-313, and 16-93-314, treason is a Class A felony.

2

3 SECTION 32. Arkansas Code § 5-54-120(d), regarding the charge of
4 failure to appear, is amended as follows:

5 (d) This section does not apply to an order to appear imposed as a
6 condition of suspension or probation pursuant to under § 5-4-303 or an order
7 to appear issued prior to a revocation hearing pursuant to ~~§ 5-4-310~~ under §
8 16-93-307.

9

10 SECTION 33. Arkansas Code § 5-64-401 is repealed.

11 ~~5-64-401. Criminal penalties.~~

12 ~~(a) Controlled Substance—Manufacturing, Delivering, or Possessing~~
13 ~~with Intent to Manufacture or Deliver.—Except as authorized by subchapters~~
14 ~~1-6 of this chapter, it is unlawful for any person to manufacture, deliver,~~
15 ~~or possess with intent to manufacture or deliver a controlled substance. Any~~
16 ~~person who violates this subsection with respect to:~~

17 ~~(1) Schedule I or II Narcotic Drug or Methamphetamine.~~

18 ~~(A)(i) A controlled substance classified in Schedule I or~~
19 ~~Schedule II that is a narcotic drug or methamphetamine, and by aggregate~~
20 ~~weight, including an adulterant or diluent, is less than twenty-eight grams~~
21 ~~(28 g), is guilty of a felony and shall be imprisoned for not less than ten~~
22 ~~(10) years nor more than forty (40) years, or life, and shall be fined an~~
23 ~~amount not exceeding twenty-five thousand dollars (\$25,000).~~

24 ~~(ii) For any purpose other than disposition, this~~
25 ~~offense is a Class Y felony.~~

26 ~~(B)(i) A controlled substance classified in Schedule I or~~
27 ~~Schedule II that is a narcotic drug or methamphetamine, and by aggregate~~
28 ~~weight, including an adulterant or diluent, is twenty-eight grams (28 g) or~~
29 ~~more but less than two hundred grams (200 g), is guilty of a felony and shall~~
30 ~~be imprisoned for not less than fifteen (15) years nor more than forty (40)~~
31 ~~years, or life, and shall be fined an amount not exceeding fifty thousand~~
32 ~~dollars (\$50,000).~~

33 ~~(ii) For any purpose other than disposition, this~~
34 ~~offense is a Class Y felony.~~

35 ~~(C)(i) A controlled substance classified in Schedule I or~~
36 ~~Schedule II that is a narcotic drug or methamphetamine, and by aggregate~~

1 weight, including an adulterant or diluent, is two hundred grams (200 g) or
2 more but less than four hundred grams (400 g), is guilty of a felony and
3 shall be imprisoned for not less than twenty (20) years nor more than forty
4 (40) years, or life, and shall be fined an amount not exceeding one hundred
5 thousand dollars (\$100,000).

6 (ii) For any purpose other than disposition, this
7 offense is a Class Y felony.

8 (D)(i) A controlled substance classified in Schedule I or
9 Schedule II that is a narcotic drug or methamphetamine, and by aggregate
10 weight, including an adulterant or diluent, is four hundred grams (400 g) or
11 more, is guilty of a felony and shall be imprisoned for not less than forty
12 (40) years, or life, and shall be fined an amount not exceeding two hundred
13 and fifty thousand dollars (\$250,000).

14 (ii) For any purpose other than disposition, this
15 offense is a Class Y felony;

16 (2) Other Schedule I, II, or III.

17 (A)(i) Any other controlled substance classified in
18 Schedule I, Schedule II, or Schedule III that by aggregate weight, including
19 an adulterant or diluent, is less than twenty-eight grams (28 g), is guilty
20 of a felony and shall be imprisoned for not less than five (5) years nor more
21 than twenty (20) years and shall be fined an amount not to exceed fifteen
22 thousand dollars (\$15,000).

23 (ii) For any purpose other than disposition, this
24 offense is a Class B felony.

25 (B)(i) Any other controlled substance classified in
26 Schedule I, Schedule II, or Schedule III that by aggregate weight, including
27 an adulterant or diluent, is twenty-eight grams (28 g) or more but less than
28 four hundred grams (400 g), is guilty of a felony and shall be imprisoned for
29 not less than ten (10) years nor more than forty (40) years, or life, and
30 shall be fined an amount not to exceed fifty thousand dollars (\$50,000).

31 (ii) For any purpose other than disposition, this
32 offense is a Class B felony.

33 (C)(i) Any other controlled substance classified in
34 Schedule I, Schedule II, or Schedule III that by aggregate weight, including
35 an adulterant or diluent, is four hundred grams (400 g) or more, is guilty of
36 a felony and shall be imprisoned for not less than fifteen (15) years nor

1 ~~more than forty (40) years, or life, and shall be fined an amount not~~
 2 ~~exceeding one hundred thousand dollars (\$100,000).~~

3 ~~(ii) For any purpose other than disposition, this~~
 4 ~~offense is a Class B felony;~~

5 ~~(3) Schedule IV or V.~~

6 ~~(A)(i) A substance classified in Schedule IV or Schedule V~~
 7 ~~that by aggregate weight, including an adulterant or diluent, is less than~~
 8 ~~two hundred grams (200 g), is guilty of a felony and shall be imprisoned for~~
 9 ~~not less than three (3) years nor more than ten (10) years and shall be fined~~
 10 ~~an amount not exceeding ten thousand dollars (\$10,000).~~

11 ~~(ii) For any purpose other than disposition, this~~
 12 ~~offense is a Class C felony.~~

13 ~~(B)(i) A substance classified in Schedule IV or Schedule V~~
 14 ~~that by aggregate weight, including an adulterant or diluent, is two hundred~~
 15 ~~grams (200 g) or more but less than four hundred grams (400 g), is guilty of~~
 16 ~~a felony and shall be imprisoned for not less than ten (10) years nor more~~
 17 ~~than forty (40) years, or life, and shall be fined an amount not exceeding~~
 18 ~~fifty thousand dollars (\$50,000).~~

19 ~~(ii) For any purpose other than disposition, this~~
 20 ~~offense is a Class C felony.~~

21 ~~(C)(i) A substance classified in Schedule IV or Schedule V~~
 22 ~~that by aggregate weight, including an adulterant or diluent, is four hundred~~
 23 ~~grams (400 g) or more, is guilty of a felony and shall be imprisoned for not~~
 24 ~~less than fifteen (15) years nor more than forty (40) years, or life, and~~
 25 ~~shall be fined an amount not exceeding one hundred thousand dollars~~
 26 ~~(\$100,000).~~

27 ~~(ii) For any purpose other than disposition, this~~
 28 ~~offense is a Class C felony; and~~

29 ~~(4) Schedule VI. A controlled substance classified in Schedule~~
 30 ~~VI is guilty of a felony and shall be:~~

31 ~~(A)(i) Imprisoned no less than four (4) years nor more~~
 32 ~~than ten (10) years or fined no more than twenty-five thousand dollars~~
 33 ~~(\$25,000), or both, if the quantity of the controlled substance is less than~~
 34 ~~ten pounds (10 lbs.).~~

35 ~~(ii) For any purpose other than disposition, this~~
 36 ~~offense is a Class C felony;~~

1 ~~(B)(i) Imprisoned for no less than five (5) years nor more~~
 2 ~~than twenty (20) years or fined no less than fifteen thousand dollars~~
 3 ~~(\$15,000) nor more than fifty thousand dollars (\$50,000), or both, if the~~
 4 ~~quantity of the controlled substance is ten pounds (10 lbs.) or more but less~~
 5 ~~than one hundred pounds (100 lbs.).~~

6 ~~(ii) For any purpose other than disposition, this~~
 7 ~~offense is a Class B felony;~~

8 ~~(C)(i) Imprisoned for no less than six (6) years nor more~~
 9 ~~than thirty (30) years or fined no less than fifteen thousand dollars~~
 10 ~~(\$15,000) nor more than one hundred thousand dollars (\$100,000), or both, if~~
 11 ~~the quantity of the controlled substance is one hundred pounds (100 lbs.) or~~
 12 ~~more but less than five hundred pounds (500 lbs.).~~

13 ~~(ii) For any purpose other than disposition, this~~
 14 ~~offense is a Class A felony; or~~

15 ~~(D)(i) Imprisoned for no less than ten (10) years nor more~~
 16 ~~than forty (40) years or fined no more than two hundred fifty thousand~~
 17 ~~dollars (\$250,000), or both, if the quantity of the controlled substance is~~
 18 ~~five hundred pounds (500 lbs.) or more.~~

19 ~~(ii) For any purpose other than disposition, this~~
 20 ~~offense is a Class Y felony.~~

21 ~~(b) Counterfeit Substance — Rebuttable Presumption.~~

22 ~~(1) Except as authorized by this chapter, it is unlawful for any~~
 23 ~~person to create, deliver, or possess with intent to deliver a counterfeit~~
 24 ~~substance.~~

25 ~~(2) For purposes of this subsection, possession of one hundred~~
 26 ~~(100) dosage units of any one (1) counterfeit substance or possession of two~~
 27 ~~hundred (200) dosage units of counterfeit substances regardless of the type~~
 28 ~~creates a rebuttable presumption that the person possesses the counterfeit~~
 29 ~~substance with intent to deliver.~~

30 ~~(3) Any person who violates this subsection with respect to:~~

31 ~~(A) A counterfeit substance purporting to be a controlled~~
 32 ~~substance classified in Schedule I or Schedule II that is a narcotic drug or~~
 33 ~~methamphetamine, is guilty of a Class B felony;~~

34 ~~(B) Any other counterfeit substance purporting to be a~~
 35 ~~controlled substance classified in Schedule I, Schedule II, or Schedule III~~
 36 ~~is guilty of a Class C felony;~~

1 ~~(C)—A counterfeit substance purporting to be a controlled
2 substance classified in Schedule IV is guilty of a Class C felony;~~

3 ~~(D)—A counterfeit substance purporting to be a controlled
4 substance classified in Schedule V is guilty of a Class C felony; and~~

5 ~~(E)—A counterfeit substance purporting to be a controlled
6 substance that is not classified as a scheduled controlled substance is
7 guilty of a Class D felony.~~

8 ~~(c)—Possession of Counterfeit or Controlled Substance.~~

9 ~~(1)—It is unlawful for any person to possess a controlled
10 substance or counterfeit substance unless the controlled substance or
11 counterfeit substance was obtained:~~

12 ~~(A)—Directly from or pursuant to a valid prescription or
13 an order of a practitioner while acting in the course of his or her
14 professional practice; or~~

15 ~~(B)—As otherwise authorized by this chapter.~~

16 ~~(2)—Any person who violates this subsection with respect to:~~

17 ~~(A)—A controlled substance classified in Schedule I or
18 Schedule II is guilty of a Class C felony;~~

19 ~~(B)—Any other controlled substance, first offense, is
20 guilty of a Class A misdemeanor;~~

21 ~~(C)—Any other controlled substance, second offense, is
22 guilty of a Class D felony; and~~

23 ~~(D)—Any other controlled substance, third or subsequent
24 offense, is guilty of a Class C felony.~~

25 ~~(3)—For purposes of this subsection, an offense is considered a
26 second or subsequent offense if, before his or her conviction for the
27 offense, the person has been convicted for an offense under this subsection
28 (c) or under any equivalent penal statute of the United States or of any
29 state.~~

30 ~~(d)—Rebuttable Presumption of Intent to Deliver.~~

31 ~~(1)—Possession by any person of a quantity of any controlled
32 substance including the mixture or substance listed in subdivision (d)(3) of
33 this section in excess of the quantity limit set out in subdivision (d)(3) of
34 this section creates a rebuttable presumption that the person possesses the
35 controlled substance with intent to deliver.~~

36 ~~(2)—The presumption may be overcome by the submission of~~

1 ~~evidence sufficient to create a reasonable doubt that the person charged~~
2 ~~possessed the controlled substance with intent to deliver.~~

3 ~~(3)(A) List of controlled substances and quantities:~~

- 4 ~~(i) Cocaine — one gram (1 g);~~
- 5 ~~(ii) Codeine — three hundred milligrams (300 mg);~~
- 6 ~~(iii) Hashish — six grams (6 g);~~
- 7 ~~(iv) Heroin — one hundred milligrams (100 mg);~~
- 8 ~~(v) Hydromorphone Hydrochloride — sixteen milligrams~~
9 ~~(16 mg);~~
- 10 ~~(vi) Lysergic Acid Diethylamide (LSD) — one hundred~~
11 ~~micrograms (100 [mu]g);~~
- 12 ~~(vii) Marijuana — one ounce (1 oz.);~~
- 13 ~~(viii) Methadone — one hundred milligrams (100 mg);~~
- 14 ~~(ix) Methamphetamine — two hundred milligrams (200~~
15 ~~mg);~~
- 16 ~~(x) Morphine — three hundred milligrams (300 mg);~~
- 17 ~~(xi) Opium — three grams (3 g); and~~
- 18 ~~(xii) Pethidine — three hundred milligrams (300 mg).~~

19 ~~(B) For a controlled substance other than those listed in~~
20 ~~subdivision (d)(3)(A) of this section:~~

- 21 ~~(i) Depressant drug — twenty (20) hypnotic dosage~~
22 ~~units;~~
- 23 ~~(ii) Hallucinogenic drug — ten (10) dosage units;~~
24 ~~and~~
- 25 ~~(iii) Stimulant drug — two hundred milligrams (200~~
26 ~~mg).~~

27 ~~(c) Immunity for Practitioner. — No civil or criminal liability shall~~
28 ~~be imposed by virtue of this chapter on any practitioner who manufactures,~~
29 ~~distributes, or possesses a counterfeit substance for use by a registered~~
30 ~~practitioner in the course of professional practice or research or for use as~~
31 ~~a placebo by a registered practitioner in the course of professional practice~~
32 ~~or research.~~

33 ~~(f) Possession in Detention Facility — Enhanced Penalties. — When any~~
34 ~~person is convicted of the unlawful possession of a controlled substance in~~
35 ~~any state criminal detention facility, county criminal detention facility, or~~
36 ~~city criminal detention facility, or any juvenile detention facility, the~~

1 ~~penalty for the offense is increased to the next higher classification of~~
2 ~~felony or misdemeanor as prescribed by law for the offense.~~

3 ~~(g) Rebuttable Presumption on Attempt to Manufacture Methamphetamine.~~

4 ~~(1) Simultaneous possession by any person of drug paraphernalia~~
5 ~~and a drug precursor appropriate for use to manufacture methamphetamine or~~
6 ~~possession by any person of drug paraphernalia appropriate for use to~~
7 ~~manufacture methamphetamine that tests positive for methamphetamine residue~~
8 ~~creates a rebuttable presumption that the person has engaged in conduct that~~
9 ~~constitutes a substantial step in a course of conduct intended to result in~~
10 ~~the manufacture of methamphetamine in violation of § 5-3-201, conduct~~
11 ~~constituting attempt and this section.~~

12 ~~(2) The presumption may be overcome by the submission of~~
13 ~~evidence sufficient to create a reasonable doubt that the person charged~~
14 ~~attempted to manufacture methamphetamine.~~

15 ~~(h) Clean Up Liability - Restitution.~~

16 ~~(1) A person who violates this section is liable for the cost of~~
17 ~~the cleanup of the site where the person:~~

18 ~~(A) Manufactured a controlled substance; or~~

19 ~~(B) Possessed drug paraphernalia or a chemical for the~~
20 ~~purpose of manufacturing a controlled substance.~~

21 ~~(2) The person shall make restitution to the state or local~~
22 ~~agency responsible for the cleanup for the cost of the cleanup under § 5-4-~~
23 ~~205.~~

24
25 SECTION 34. Arkansas Code § 5-64-402 is amended to read as follows:

26 5-64-402. Controlled substances - Offenses relating to records,
27 maintaining premises, etc.

28 (a) It is unlawful for any person:

29 (1) To refuse an entry into any premises for any inspection
30 authorized by this chapter; or

31 (2) Knowingly to keep or maintain any store, shop, warehouse,
32 dwelling, building, or other structure or place or premise that is resorted
33 to by a person for the purpose of using or obtaining a controlled substance
34 in violation of this chapter or that is used for keeping a controlled
35 substance in violation of this chapter.

36 (b)(1) Any person who violates this section is guilty of a Class D C

1 felony.

2 (2) However, a violation of this section is a Class B felony if
3 the violation is committed on or within one thousand feet (1,000') of the
4 real property of a certified drug-free zone.

5 (c) ~~The following are certified drug free zones~~ As used in this
6 section:

7 (1) "Certified drug-free zone" means:

8 ~~(1)(A)~~ A city or state park;

9 ~~(2)(B)~~ A public or private elementary or secondary school,
10 public vocational school, or public or private college or university;

11 ~~(3)(C)~~ A ~~community or recreation center~~ A designated
12 school bus stop as identified on the route list published by a public school
13 district annually;

14 ~~(4)(D)~~ A ~~Boys Club, Girls Club, YMCA, or YWCA~~ A publically
15 funded and administered multifamily housing development; ~~or~~

16 ~~(5)(E)~~ A skating rink, ~~Boys Club, Girls Club, YMCA, YWCA,~~
17 community center, recreation center, or video arcade;

18 (F) A drug or alcohol treatment facility;

19 (G) A day care center;

20 (H) A church; or

21 (I) A shelter as defined in § 9-4-102; and

22 (2) "Recreation center" means a public place consisting of
23 various types of entertainment including without limitation:

24 (A) Billiards or pool;

25 (B) Ping pong or table tennis;

26 (C) Bowling;

27 (D) Video games;

28 (E) Pinball machines; or

29 (F) Any other similar type of entertainment.

30

31 SECTION 35. Arkansas Code § 5-64-403 is amended to read as follows:

32 ~~5-64-403. Fraud—Criminal penalties—Drug paraphernalia.~~

33 ~~(a) Fraud. It is unlawful for a person knowingly to:~~

34 ~~(1) Distribute as a registrant a controlled substance classified~~
35 ~~in Schedule I or Schedule II, except pursuant to an order form as required by~~
36 ~~§ 5-64-307;~~

1 ~~(2) Acquire or obtain possession of a controlled substance by~~
2 ~~misrepresentation, fraud, forgery, deception, subterfuge, or theft;~~

3 ~~(3) Furnish false or fraudulent material information in, or omit~~
4 ~~any material information from, any record, application, report, or other~~
5 ~~document required to be kept or filed under this chapter;~~

6 ~~(4) Make, distribute, or possess any punch, die, plate, stone,~~
7 ~~or other thing designed to print, imprint, or reproduce the trademark, trade~~
8 ~~name, or other identifying mark, imprint, or device of another or any~~
9 ~~likeness of any trademark, trade name, or other identifying mark, imprint, or~~
10 ~~device of another upon any drug or container or labeling of a drug or~~
11 ~~container so as to render the drug a counterfeit substance; and~~

12 ~~(5)(A) Agree, consent, or in any manner offer to unlawfully~~
13 ~~sell, furnish, transport, administer, or give any controlled substance to any~~
14 ~~person or to arrange for any action described in this subdivision (a)(5)(A),~~
15 ~~and then to substitute a noncontrolled substance in lieu of the controlled~~
16 ~~substance bargained for.~~

17 ~~(B) The proffer of a controlled substance creates a~~
18 ~~rebuttable presumption of intent to deliver that does not require additional~~
19 ~~showing of specific intent to substitute a noncontrolled substance.~~

20 ~~(b) Penalties.~~

21 ~~(1) Any person who violates any provision of subdivisions~~
22 ~~(a)(1)-(4) of this section is guilty of a Class C felony.~~

23 ~~(2) Any person who violates subdivision (a)(5) of this section~~
24 ~~with respect to:~~

25 ~~(A) A noncontrolled substance represented to be a~~
26 ~~controlled substance classified in Schedule I or Schedule II that is a~~
27 ~~narcotic drug is guilty of a Class B felony;~~

28 ~~(B) Any other noncontrolled substance represented to be a~~
29 ~~controlled substance classified in Schedule I, Schedule II, or Schedule III~~
30 ~~is guilty of a Class C felony;~~

31 ~~(C) A noncontrolled substance represented to be a~~
32 ~~controlled substance classified in Schedule IV is guilty of a Class C felony;~~

33 ~~(D) A noncontrolled substance represented to be a~~
34 ~~controlled substance classified in Schedule V is guilty of a Class C felony;~~
35 ~~and~~

36 ~~(E) A noncontrolled substance represented to be a~~

1 ~~controlled substance classified in Schedule VI is guilty of a Class D felony.~~

2 ~~(c) Drug Paraphernalia.~~

3 ~~(1)(A)(i) It is unlawful for any person to use, or to possess~~
4 ~~with intent to use, drug paraphernalia to plant, propagate, cultivate, grow,~~
5 ~~harvest, manufacture, compound, convert, produce, process, prepare, test,~~
6 ~~analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or~~
7 ~~otherwise introduce into the human body a controlled substance in violation~~
8 ~~of this chapter.~~

9 ~~(ii) A violation of subdivision (c)(1)(A)(i) of this~~
10 ~~section is a Class A misdemeanor.~~

11 ~~(B) Any person who violates subdivision (c)(1)(A)(i) of~~
12 ~~this section in the course of and in furtherance of a felony violation of~~
13 ~~this chapter is guilty of a Class C felony.~~

14 ~~(2)(A)(i) It is unlawful for any person to deliver, possess with~~
15 ~~intent to deliver, or manufacture with intent to deliver drug paraphernalia~~
16 ~~knowing, or under circumstances in which a person reasonably should know,~~
17 ~~that the drug paraphernalia will be used to plant, propagate, cultivate,~~
18 ~~grow, harvest, manufacture, compound, convert, produce, process, prepare,~~
19 ~~test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale,~~
20 ~~or otherwise introduce into the human body a controlled substance in~~
21 ~~violation of this chapter.~~

22 ~~(ii) Any person who violates subdivision~~
23 ~~(c)(2)(A)(i) of this section is guilty of a Class A misdemeanor.~~

24 ~~(B) Any person who violates subdivision (c)(2)(A)(i) of~~
25 ~~this section in the course of and in furtherance of a felony violation of~~
26 ~~this chapter is guilty of a Class C felony.~~

27 ~~(3)(A) Any person eighteen (18) years of age or over who~~
28 ~~violates subdivision (c)(2)(A)(i) of this section immediately preceding by~~
29 ~~delivering drug paraphernalia in the course of and in furtherance of a felony~~
30 ~~violation of this chapter to a person under eighteen (18) years of age who is~~
31 ~~at least three (3) years his or her junior is guilty of a Class B felony.~~

32 ~~(B) Otherwise, any person eighteen (18) years of age or~~
33 ~~over who violates subdivision (c)(2)(A)(i) of this section by delivering drug~~
34 ~~paraphernalia to a person under eighteen (18) years of age who is at least~~
35 ~~three (3) years his or her junior is guilty of a Class A misdemeanor.~~

36 ~~(4)(A) It is unlawful for any person to place in any newspaper,~~

~~magazine, handbill, or other publication any advertisement knowing, or under
circumstances in which a person reasonably should know, that the purpose of
the advertisement, in whole or in part, is to promote the sale of a
counterfeit substance or of an object designed or intended for use as drug
paraphernalia.~~

~~(B) Any person who violates subdivision (c)(4)(A) of this
section is guilty of a Class C felony.~~

~~(5)(A) It is unlawful for any person to use, or to possess with
intent to use, drug paraphernalia to manufacture methamphetamine in violation
of this chapter.~~

~~(B) Any person who pleads guilty or nolo contendere to or
is found guilty of violating subdivision (c)(5)(A) of this section is guilty
of a Class B felony.~~

5-64-403. Controlled substances – Fraudulent practices.

(a) It is unlawful for a person to knowingly:

(1) Distribute as a practitioner a Schedule I or Schedule II
controlled substance, except under an order form as required by § 5-64-307;

(2) Acquire or obtain possession of a controlled substance by
misrepresentation, fraud, forgery, deception, subterfuge, or theft;

(3) Furnish false or fraudulent material information in or omit
any material information from any record, application, report, or other
document required to be kept or filed under this chapter;

(4) Make, distribute, or possess any punch, die, plate, stone,
or other thing designed to print, imprint, or reproduce the trademark, trade
name, or other identifying mark, imprint, or device of another person or any
likeness of any trademark, trade name, or other identifying mark, imprint, or
device of another person upon any drug or container or labeling of a drug or
container so as to render the drug a counterfeit substance; or

(5)(A) Agree, consent, or in any manner offer to unlawfully
sell, furnish, transport, administer, or give any controlled substance to any
person or to arrange for any action described in this subdivision (a)(5)(A),
and then to substitute a noncontrolled substance in lieu of the controlled
substance bargained for.

(B) The proffer of a controlled substance creates a
rebuttable presumption of knowingly agreeing, consenting, or offering to
sell, furnish, transport, administer, or give a noncontrolled substance that

1 does not require additional showing of specific purpose to substitute a
2 noncontrolled substance.

3 (b) A person who violates:

4 (1) Subdivisions (a)(1), (a)(2), (a)(3), or (a)(4) of this
5 section upon conviction is guilty of a Class D felony; or

6 (2) Subdivision (a)(5) of this section with respect to a
7 noncontrolled substance represented to be a controlled substance classified
8 in:

9 (A) Schedule I or Schedule II upon conviction is guilty of
10 a Class C felony;

11 (B) Schedule III, Schedule IV, or Schedule V upon
12 conviction is guilty of a Class D felony; or

13 (C) Schedule VI upon conviction is guilty of a Class A
14 misdemeanor.

15
16 SECTION 36. Arkansas Code § 5-64-404(d), regarding the penalty for use
17 of a communication device, is amended to read as follows:

18 (d) Any person who violates this section upon conviction is guilty of
19 a Class C felony.

20
21 SECTION 37. Arkansas Code § 5-64-405 is amended to read as follows:

22 5-64-405. Continuing criminal enterprise.

23 (a) A person commits the offense of engaging in a continuing criminal
24 enterprise if he or she:

25 (1) Violates any provision of this chapter that is a felony,
26 ~~except § 5-64-401(e)~~ §§ 5-64-419 and 5-64-441; and

27 (2) The violation is a part of a continuing series of two (2) or
28 more felony offenses of this chapter, ~~except § 5-64-401(e)~~ §§ 5-64-419 and 5-
29 64-441:

30 (A) That are undertaken by that person in concert with
31 five (5) or more other persons with respect to whom that person occupies a
32 position of organizer, a supervisory position, or any other position of
33 management; and

34 (B) From which that person obtained substantial income or
35 resources.

36 (b)(1) A person who engages in a continuing criminal enterprise upon

1 conviction is guilty of a an unclassified felony and ~~upon conviction~~ shall be
2 sentenced to a term of imprisonment up to two (2) times the term otherwise
3 authorized for the underlying offense referenced in subdivision (a)(1) of
4 this section and shall be fined an amount up to two (2) times that authorized
5 for the underlying offense referenced in subdivision (a)(1) of this section.

6 (2) For any purpose other than disposition, engaging in a
7 continuing criminal enterprise is a Class Y felony.

8 (c)(1) A person who violates subsection (a) of this section after a
9 previous conviction under subsection (a) of this section has become final
10 upon conviction is guilty of a an unclassified felony and shall be punished
11 by a term of imprisonment not exceeding three (3) times that authorized for
12 the underlying offense referenced in subdivision (a)(1) of this section and a
13 fine not exceeding three (3) times the amount authorized for the underlying
14 offense referenced in subdivision (a)(1) of this section.

15 (2) For any purpose other than disposition, engaging in a
16 continuing criminal enterprise is a Class Y felony.

17 (d)(1) Upon conviction, the prosecuting attorney may institute a civil
18 action against any person who violates this section to obtain a judgment
19 against all persons who ~~violates~~ violate this section, jointly and severally,
20 for damages in an amount equal to three (3) times the proceeds acquired by
21 all persons involved in the enterprise or by reason of conduct in furtherance
22 of the enterprise, together with costs incurred for resources and personnel
23 used in the investigation and prosecution of both criminal and civil
24 proceedings.

25 (2) The standard of proof in an action brought under this
26 section is a preponderance of the evidence.

27 (3) The procedures in the asset forfeiture law, § 5-64-505,
28 shall apply.

29 (4) A defendant in a civil action brought under this subsection
30 is entitled to a trial by jury.

31 (e) An offender found guilty of a violation of this section shall not:

- 32 (1) Have his or her sentence suspended;
- 33 (2) Be placed on probation;
- 34 (3) Have imposition of sentence suspended;
- 35 (4) Have the execution of the sentence;
- 36 (5) Have the sentence deferred; or

1 (6) Be eligible for § 16-93-301 et seq.

2
3 SECTION 38. Arkansas Code § 5-64-406 is amended to read as follows:

4 5-64-406. ~~Distribution~~ Delivery to minors – Enhanced penalties.

5 (a) Any person eighteen (18) years of age or ~~over~~ older who violates §
6 ~~5-64-401(a)~~ § 5-64-422, § 5-64-426, or § 5-64-440 by ~~distributing~~ delivering
7 or trafficking a Schedule I or Schedule II controlled substance ~~listed in~~
8 ~~Schedule I or Schedule II~~ that is a narcotic drug or methamphetamine to a
9 person under eighteen (18) years of age who is at least three (3) years ~~his~~
10 ~~or her junior~~ younger than the person is ~~punishable by~~ subject to an enhanced
11 sentence of the fine authorized by ~~§ 5-64-401(a)(1)~~ § 5-64-422, § 5-64-426,
12 or § 5-64-440, by a term of imprisonment of up to ~~twice~~ two (2) times that
13 authorized by ~~§ 5-64-401(a)(1)~~ § 5-64-422, § 5-64-426, or § 5-64-440, or by
14 both.

15 (b) Any person eighteen (18) years of age or ~~over~~ older who violates §
16 ~~5-64-401~~ § 5-64-426, § 5-64-430, § 5-64-434, § 5-64-438, or § 5-64-440 by
17 ~~distributing~~ delivering or trafficking any other controlled substance ~~listed~~
18 ~~in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V~~ to a
19 person under eighteen (18) years of age who is at least three (3) years ~~his~~
20 ~~junior~~ younger than the person is ~~punishable by~~ subject to an enhanced
21 sentence of the fine authorized by ~~§ 5-64-401(a)(2), (3), or (4)~~ § 5-64-426,
22 § 5-64-430, § 5-64-434, § 5-64-438, or § 5-64-440, by a term of imprisonment
23 up to ~~twice~~ two (2) times that authorized by ~~§ 5-64-401(a)(2), (3), or (4)~~ §
24 5-64-426, § 5-64-430, § 5-64-434, § 5-64-438, or § 5-64-440, or both.

25 (c) A person who is not otherwise subject to an enhancement to his or
26 her sentence as provided in subsection (a) or (b) of this section and is
27 convicted of delivering a controlled substance to a person under eighteen
28 (18) years of age is subject to an additional term of imprisonment of ten
29 (10) years.

30
31 SECTION 39. The introductory language of Arkansas Code § 5-64-407(a),
32 regarding the manufacture of methamphetamine in the presence of certain
33 persons, is amended to read as follows:

34 (a) ~~Any~~ A person who is found guilty of or who pleads guilty or nolo
35 contendere to manufacture of methamphetamine, ~~§ 5-64-401(a)(1)~~ § 5-64-423, or
36 possession of drug paraphernalia with the ~~intent~~ purpose to manufacture

1 methamphetamine, ~~§ 5-64-403(e)(5)~~ § 5-64-443(a)(1), may be subject to an
2 enhanced sentence of an additional term of imprisonment of ten (10) years if
3 the offense is committed:

4
5 SECTION 40. Arkansas Code § 5-64-408 is amended to read as follows:

6 5-64-408. Subsequent convictions – Enhanced penalties.

7 (a) Unless otherwise provided in this chapter, ~~Any~~ a person convicted
8 of a second or subsequent offense under this chapter shall be imprisoned for
9 a term up to ~~twice~~ two (2) times the term otherwise authorized, fined an
10 amount up to ~~twice~~ two (2) times ~~that the fine~~ otherwise authorized, or both.

11 (b) For purposes of this section, an offense is considered a second or
12 subsequent offense if, ~~prior to~~ before his or her conviction of the offense,
13 the offender has at any time been convicted under this chapter or under any
14 statute of the United States or of any state relating to a narcotic drug,
15 marijuana, depressant, stimulant, or a hallucinogenic drug.

16 (c) This section does not apply to an offense under ~~§ 5-64-401(e)~~ § 5-
17 64-419 or § 5-64-441.

18
19 SECTION 41. Arkansas Code § 5-64-410 is repealed.

20 ~~5-64-410. Penalties for delivery – Enhanced penalties.~~

21 ~~(a)(1) Notwithstanding any other provision of law to the contrary:~~

22 ~~(A) Any person convicted of delivering a controlled~~
23 ~~substance included in Schedule I shall be sentenced for a term of~~
24 ~~imprisonment of not less than ten (10) years; and~~

25 ~~(B) Any person convicted of delivering a controlled~~
26 ~~substance included in Schedule I, Schedule II, Schedule III, Schedule IV,~~
27 ~~Schedule V, or Schedule VI to a school student in grade one through twelve~~
28 ~~(1-12) or any other person under eighteen (18) years of age shall be~~
29 ~~sentenced for a term of imprisonment of not less than ten (10) years.~~

30 ~~(2) A person over eighteen (18) years of age convicted of an~~
31 ~~offense defined in this subsection, except delivery of less than one ounce (1~~
32 ~~oz.) of a Schedule VI controlled substance, is not eligible for early release~~
33 ~~on parole as provided in § 16-93-601.~~

34 ~~(b) The provisions of this section are cumulative and supplemental to~~
35 ~~any other law of this state prescribing a penalty for delivery of a~~
36 ~~controlled substance and are deemed to modify only a law in direct conflict.~~

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SECTION 42. Arkansas Code § 5-64-411 is amended to read as follows:

5-64-411. Proximity to certain facilities – Enhanced penalties.

~~(a) Any person who commits an offense under § 5-64-401(a) by selling, delivering, possessing with intent to deliver, dispensing, manufacturing, transporting, administering, or distributing a controlled substance may be subject to an enhanced sentence of an additional term of imprisonment of ten (10) years if the offense is committed on or within one thousand feet (1,000') of the real property of:~~

(a) A person is subject to an enhanced sentence of an additional term of imprisonment of ten (10) years if:

(1) The person:

(A) Possesses a controlled substance in violation of § 5-64-419 and the offense is a Class C felony or greater; or

(B) Possesses with the purpose to deliver, delivers, manufactures, or trafficks a controlled substance in violation of §§ 5-64-420–5-64-440; and

(2) The offense is committed on or within one thousand feet (1,000') of the real property of:

~~(1)~~(A) A city or state park;

~~(2)~~(B) A public or private elementary or secondary school, public vocational school, or private or public college or university;

~~(3)~~(C) A designated school bus stop as identified on the route list published by a public school district each year;

~~(4)~~(D) A skating rink, Boys Club, Girls Club, YMCA, YWCA, ~~or~~ community center, ~~or~~ recreation center, or video arcade;

~~(5)~~(E) A publicly funded and administered multifamily housing development;

~~(6)~~(F) A drug or alcohol treatment facility;

~~(7)~~(G) A day care center;

~~(8)~~(H) A church; or

~~(9)~~(I) A shelter as defined in § 9-4-102.

(b) The enhanced portion of the sentence is consecutive or concurrent to any other sentence imposed at the discretion of the court.

(c) Any person convicted under this section is not eligible for early release on parole or community correction transfer for the enhanced portion

1 of the sentence.

2 (d)(1) Except for property covered by subdivision ~~(a)(3)~~ (a)(2)(C) of
3 this section, property covered by this section shall have a notice posted at
4 the entrances to the property stating:

5 "THE SALE OF DRUGS UPON OR WITHIN ONE THOUSAND FEET (1000') OF THIS PROPERTY
6 MAY SUBJECT THE SELLER OF THE DRUGS TO AN ADDITIONAL TEN (10) YEARS
7 IMPRISONMENT IN ADDITION TO THE TERM OF IMPRISONMENT OTHERWISE PROVIDED FOR
8 THE UNLAWFUL SALE OF DRUGS."

9 (2) However, the posting of the notice is not a necessary
10 element for the enhancement of a sentence under this section.

11 (e) As used in this section, "recreation center" means a public place
12 of entertainment consisting of various types of entertainment, including, ~~but~~
13 ~~not limited to,~~ without limitation billiards or pool, ping pong or table
14 tennis, bowling, video games, pinball machines, or any other similar type of
15 entertainment.

16

17 SECTION 43. Arkansas Code § 5-64-413(a), regarding probation for
18 first-time drug offenders, is amended to read as follows:

19 (a) When any person who has not previously pleaded guilty or nolo
20 contendere or been found guilty of any offense under this chapter or under
21 any statute of the United States or of any state relating to a narcotic drug,
22 marijuana, stimulant, depressant, or a hallucinogenic drug pleads guilty or
23 nolo contendere to or is found guilty of possession of a controlled substance
24 under ~~§ 5-64-401, with the exception of a conviction for possession of a~~
25 ~~substance listed under Schedule I, § 5-64-419,~~ the court without entering a
26 judgment of guilt and with the consent of the defendant may defer further
27 proceedings and place the defendant on probation for a period of not less
28 than one (1) year under such terms and conditions as may be set by the court.

29

30 SECTION 44. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
31 to add a new section to read as follows:

32 5-64-419. Possession of a controlled substance.

33 (a) Except as provided by this chapter, it is unlawful for a person to
34 possess a controlled substance.

35 (b) A person who violates this section with respect to:

36 (1) A Schedule I or Schedule II controlled substance that is

1 methamphetamine or cocaine with an aggregate weight, including an adulterant
2 or diluent, of:

3 (A) Less than two grams (2g) upon conviction is guilty of
4 a Class D felony;

5 (B) Two grams (2g) or more but less than ten grams (10g)
6 upon conviction is guilty of a Class C felony; or

7 (C) Ten grams (10g) or more but less than two hundred
8 grams (200g) upon conviction is guilty of a Class B felony;

9 (2) A Schedule I or Schedule II controlled substance that is not
10 methamphetamine or cocaine with an aggregate weight, including an adulterant
11 or diluent, of:

12 (A) Less than two grams (2g) upon conviction is guilty of
13 a Class D felony;

14 (B) Two grams (2g) or more but less than twenty-eight
15 grams (28g) upon conviction is guilty of a Class C felony; or

16 (C) Twenty-eight grams (28g) or more but less than two
17 hundred grams (200g) upon conviction is guilty of a Class B felony;

18 (3) A Schedule III controlled substance with an aggregate
19 weight, including an adulterant or diluent, of:

20 (A) Less than two grams (2g) upon conviction is guilty of
21 a Class A misdemeanor;

22 (B) Two grams (2g) or more but less than twenty-eight
23 grams (28g) upon conviction is guilty of a Class D felony;

24 (C) Twenty-eight grams (28g) or more but less than two
25 hundred (200g) upon conviction is guilty of a Class C felony;

26 (D) Two hundred grams (200g) or more but less than four
27 hundred grams (400g) upon conviction is guilty of a Class B felony;

28 (4) A Schedule IV or Schedule V controlled substance with an
29 aggregate weight, including an adulterant or diluent, of:

30 (A) Less than twenty-eight grams (28g) upon conviction is
31 guilty of a Class A misdemeanor;

32 (B) Twenty eight grams (28g) or more but less than two
33 hundred grams (200g) upon conviction is guilty of a Class D felony;

34 (C) Two hundred grams (200g) or more but less than four
35 hundred grams (400g) upon conviction is guilty of a Class C felony; or

36 (D) Four hundred grams (400g) or more but less than eight

1 hundred grams (800g) upon conviction is guilty of a Class B felony; or

2 (5) A Schedule VI controlled substance with an aggregate weight,
3 including an adulterant or diluent, of:

4 (i) Less than four ounces (4 oz.) upon conviction is
5 guilty of a Class A misdemeanor;

6 (ii) One ounce (1 oz.) or more but less than four
7 ounces (4 oz.) and the person has two (2) previous convictions under this
8 section or the former § 5-64-401(c) upon conviction is guilty of a Class D
9 felony;

10 (iii) Four ounces (4 oz.) or more but less than ten
11 pounds (10 lbs.) upon conviction is guilty of a Class D felony;

12 (iv) Ten pounds (10 lbs.) or more but less than
13 twenty five pounds (25 lbs.) upon conviction is guilty of a Class C felony;

14 (v) Twenty five pounds (25 lbs.) or more but less
15 than one hundred pounds (100 lbs.) upon conviction is guilty of a Class B
16 felony; or

17 (vi) One hundred pounds (100 lbs.) or more but less
18 than five hundred pounds (500 lbs.) upon conviction is guilty of a Class A
19 felony.

20 (c) If a person possesses a controlled substance in violation of this
21 section while the person is an inmate in a state criminal detention facility,
22 county criminal detention facility, city criminal detention facility, or
23 juvenile detention facility, the penalty for the offense is increased to the
24 next higher classification as prescribed by law for the offense.

25
26 SECTION 45. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter
27 4 is amended to add a new section to read as follows:

28 5-64-420. Possession of methamphetamine or cocaine with the purpose to
29 deliver.

30 (a) Except as provided by this chapter, it is unlawful if a person
31 possesses methamphetamine or cocaine with the purpose to deliver the
32 methamphetamine or cocaine. Purpose to deliver may be shown by any of the
33 following factors:

34 (1) The person possesses the means to weigh, separate, or
35 package methamphetamine or cocaine; or

36 (2) The person possesses a record indicating a drug-related

1 transaction; or

2 (3) The methamphetamine or cocaine is separated and packaged in
3 a manner to facilitate delivery; or

4 (4) The person possesses a firearm that is in the immediate
5 physical control of the person at the time of the possession of
6 methamphetamine or cocaine; or

7 (5) The person possesses at least two (2) other controlled
8 substances in any amount; or

9 (6) Other relevant and admissible evidence that contributes to
10 the proof that a person's purpose was to deliver methamphetamine or cocaine.

11 (b) A person who violates this section upon conviction is guilty of a:

12 (1) Class C felony if the person possessed less than two grams
13 (2g) of methamphetamine or cocaine by aggregate weight, including an
14 adulterant or diluent;

15 (2) Class B felony if the person possessed two grams (2g) or
16 more but less than ten (10g) grams of methamphetamine or cocaine by aggregate
17 weight, including an adulterant or diluent; or

18 (3) Class A felony if the person possessed ten grams (10g) grams
19 or more but less than two hundred grams (200g) of methamphetamine or cocaine
20 by aggregate weight, including an adulterant or diluent.

21
22 SECTION 46. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter
23 4 is amended to add a new section to read as follows:

24 5-64-422. Delivery of methamphetamine or cocaine.

25 (a) Except as provided by this chapter, it is unlawful for a person to
26 deliver methamphetamine or cocaine.

27 (b)(1) A person who delivers less than two grams (2g) by aggregate
28 weight, including an adulterant or diluent, of methamphetamine or cocaine
29 upon conviction is guilty of a Class C felony.

30 (2) A person who delivers two grams (2g) or more but less than
31 ten grams (10g) by aggregate weight, including an adulterant or diluent, of
32 methamphetamine or cocaine upon conviction is guilty of a Class B felony.

33 (3) A person who delivers ten grams (10g) or more but less than
34 two hundred grams (200g) by aggregate weight, including an adulterant or
35 diluent, of methamphetamine or cocaine upon conviction is guilty of a Class Y
36 felony.

1
 2 SECTION 47. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
 3 to add a new section to read as follows:

4 5-64-423. Manufacture of methamphetamine – Manufacture of cocaine.

5 (a)(1) Except as provided by this chapter, it is unlawful for a person
 6 to manufacture methamphetamine.

7 (2)(A) A person who manufactures methamphetamine in an amount
 8 less than two grams (2g) by aggregate weight, including an adulterant or
 9 diluent, upon conviction is guilty of a Class C felony.

10 (B)(i) A person who manufactures methamphetamine in an
 11 amount of two grams (2g) or more by aggregate weight, including an
 12 adulterant or diluent, upon conviction is guilty of a Class Y felony.

13 (ii)(a) However, a person who manufactures
 14 methamphetamine in an amount of two grams (2g) or more by aggregate weight,
 15 including an adulterant or diluents, upon conviction is guilty of a Class A
 16 felony if the person shows by a preponderance of the evidence that he or she
 17 manufactured the methamphetamine for personal use only.

18 (b) Factors indicative of personal use may
 19 include without limitation the:

20 (1) Person did not make a delivery of
 21 methamphetamine;

22 (2) Quantity of methamphetamine
 23 manufactured by the person; or

24 (3) Method of manufacturing
 25 methamphetamine used by the person.

26 (3) A person who has one (1) or more prior convictions of
 27 manufacturing methamphetamine in any amount under this section or the former
 28 § 5-64-401 upon conviction is guilty of a Class Y felony.

29 (b)(1) Except as provided by this chapter, it is unlawful for a person
 30 to manufacture cocaine.

31 (2)(A) A person who manufactures cocaine in an amount less than
 32 two grams (2g) by aggregate weight, including an adulterant or diluent, upon
 33 conviction is guilty of a Class C felony.

34 (B) A person who manufactures cocaine in an amount of two
 35 grams (2g) or more but less than ten grams (10g), by aggregate weight,
 36 including an adulterant or diluent, upon conviction is guilty of a Class B

1 felony.

2 (C) A person who manufactures cocaine in an amount of ten
3 grams (10g) or more but less than two hundred grams (200g), by aggregate
4 weight, including an adulterant or diluent, upon conviction is guilty of a
5 Class Y felony.

6
7 SECTION 48. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter
8 4 is amended to add a new section to read as follows:

9 5-64-424. Possession of a Schedule I or Schedule II controlled
10 substance that is not methamphetamine or cocaine with the purpose to deliver.

11 (a) Except as provided by this chapter, it is unlawful if a person
12 possesses a Schedule I or Schedule II controlled substance that is not
13 methamphetamine or cocaine with the purpose to deliver the Schedule I or
14 Schedule II controlled substance that is not methamphetamine or cocaine.
15 Purpose to deliver may be shown by any of the following factors:

16 (1) The person possesses the means to weigh, separate, or
17 package a Schedule I or Schedule II controlled substance that is not
18 methamphetamine or cocaine; or

19 (2) The person possesses a record indicating a drug-related
20 transaction; or

21 (3) The Schedule I or Schedule II controlled substance that is
22 not methamphetamine or cocaine is separated and packaged in a manner to
23 facilitate delivery; or

24 (4) The person possesses a firearm that is in the immediate
25 physical control of the person at the time of the possession of the Schedule
26 I or Schedule II controlled substance that is not methamphetamine or cocaine;
27 or

28 (5) The person possesses at least two (2) other controlled
29 substances in any amount; or

30 (6) Other relevant and admissible evidence that contributes to
31 the proof that a person's purpose was to deliver a Schedule I or Schedule II
32 controlled substance.

33 (b) A person who violates this section upon conviction is guilty of a:

34 (1) Class C felony if the person possessed by aggregate weight,
35 including an adulterant or diluent:

36 (A) Less than two grams (2g) of a Schedule I or Schedule

1 II controlled substance that is not methamphetamine, cocaine, or a controlled
2 substance listed in this subdivision (b)(1);

3 (B) Thirty-two milligrams (32mg) or more but less than
4 sixty-four milligrams (64mg), or forty (40) or more but less than eighty (80)
5 dosage units of hydromorphone hydrochloride;

6 (C) Four hundred micrograms (400µg) or more but less than
7 eight hundred micrograms (800µg) or forty (40) or more but less than eighty
8 (80) dosage units of Lysergic Acid Diethylamide (LSD);

9 (D) Forty (40) or more but less than eighty (80) dosage
10 units for any other Schedule I or II depressant or hallucinogenic drug; or

11 (E) Forty (40) or more but less than eighty (80) dosage
12 units for any other Schedule I or II stimulant drug;

13 (2) Class B felony if the person possessed by aggregate weight,
14 including an adulterant or diluent:

15 (A) Two grams (2g) or more but less than twenty-eight
16 (28g) grams of a Schedule I or Schedule II controlled substance that is not
17 methamphetamine, cocaine, or a controlled substance listed in this
18 subdivision (b)(2);

19 (B) Sixty four milligrams (64mg) or more but less than one
20 hundred twenty eight milligrams (128mg), or eighty (80) or more but less than
21 one hundred sixty (160) dosage units of hydromorphone hydrochloride;

22 (C) Eight hundred micrograms (800µg) or more but less than
23 one thousand six hundred micrograms (1,600µg), or eighty (80) or more but
24 less than one hundred sixty (160) dosage units of Lysergic Acid Diethylamide
25 (LSD);

26 (D) Eighty (80) or more but less than one hundred sixty
27 (160) dosage units for any other Schedule I or II depressant or
28 hallucinogenic drug; or

29 (E) Eighty (80) or more but less than one hundred sixty
30 (160) dosage units for any other Schedule I or II stimulant drug; or

31 (3) Class A felony if the person possessed by aggregate weight,
32 including an adulterant or diluent:

33 (A) Twenty-eight grams (28g) grams or more but less than
34 two hundred grams (200g) of a Schedule I or Schedule II controlled substance
35 that is not methamphetamine, cocaine, or a controlled substance listed in
36 this subdivision (b)(3);

1 (B) One hundred twenty eight milligrams (128mg) or more or
2 eighty (80) dosage units or more but less than two hundred grams (200g) of
3 hydromorphone hydrochloride;

4 (C) One thousand six hundred micrograms (1,600µg) or more
5 or one hundred sixty (160) dosage units or more but less than two hundred
6 grams (200g) of Lysergic Acid Diethylamide (LSD);

7 (D) One hundred sixty (160) dosage units or more but less
8 than two hundred grams (200g) for any other Schedule I or II depressant or
9 hallucinogenic drug; or

10 (E) One hundred sixty (160) dosage units or more but less
11 than two hundred grams (200g) for any other Schedule I or II stimulant drug.

12 (c) It is a defense to a prosecution under this section that the
13 person possessed less than the minimum listed amount of a Schedule I or
14 Schedule II controlled substance that is not methamphetamine or cocaine and
15 that is listed in this section.

16
17 SECTION 49. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
18 to add a new section to read as follows:

19 5-64-426. Delivery of a Schedule I or Schedule II controlled substance
20 that is not methamphetamine or cocaine.

21 (a) This section does not apply to the delivery of methamphetamine or
22 cocaine, which is governed by § 5-64-422.

23 (b) Except as provided by this chapter, it is unlawful for a person to
24 deliver a Schedule I or Schedule II controlled substance.

25 (c)(1) A person who violates this section upon conviction is guilty of
26 a:

27 (1) Class C felony if the person delivered by aggregate weight,
28 including an adulterant or diluent less than:

29 (A) Two grams (2g) of a Schedule I or Schedule II
30 controlled substance that is not methamphetamine, cocaine, or a controlled
31 substance listed in this subdivision (c)(1);

32 (B) Sixty-four milligrams (64mg), or forty (40) or more
33 but less than eighty (80) dosage units of hydromorphone hydrochloride;

34 (C) Eight hundred micrograms (800µg) or eighty (80) dosage
35 units of Lysergic Acid Diethylamide (LSD);

36 (D) Eighty (80) dosage units for any other Schedule I or

1 II depressant or hallucinogenic drug; or

2 (E) Eighty (80) dosage units for any other Schedule I or

3 II stimulant drug;

4 (2) Class B felony if the person delivered by aggregate weight,
5 including an adulterant or diluent:

6 (A) Two grams (2g) or more but less than twenty-eight
7 (28g) grams of a Schedule I or Schedule II controlled substance that is not
8 methamphetamine, cocaine, or a controlled substance listed in this
9 subdivision (c)(2);

10 (B) Sixty four milligrams (64mg) or more but less than one
11 hundred twenty eight milligrams (128mg), or eighty (80) or more but less than
12 one hundred sixty (160) dosage units of hydromorphone hydrochloride;

13 (C) Eight hundred micrograms (800µg) or more but less than
14 one thousand six hundred micrograms (1,600µg), or eighty (80) or more but
15 less than one hundred sixty (160) dosage units of Lysergic Acid Diethylamide
16 (LSD);

17 (D) Eighty (80) or more but less than one hundred sixty
18 (160) dosage units for any other Schedule I or II depressant or
19 hallucinogenic drug; or

20 (E) Eighty (80) or more but less than one hundred sixty
21 (160) dosage units for any other Schedule I or II stimulant drug; or

22 (3) Class A felony if the person delivered by aggregate weight,
23 including an adulterant or diluent:

24 (A) Twenty-eight grams (28g) grams or more but less than
25 two hundred grams (200g) of a Schedule I or Schedule II controlled substance
26 that is not methamphetamine, cocaine, or a controlled substance listed in
27 this subdivision (c)(3);

28 (B) One hundred twenty eight milligrams (128mg) or more or
29 eighty (80) dosage units or more but less than two hundred grams (200g) of
30 hydromorphone hydrochloride;

31 (C) One thousand six hundred micrograms (1,600µg) or more
32 or one hundred sixty (160) or more dosage units but less than two hundred
33 grams (200g) of Lysergic Acid Diethylamide (LSD);

34 (D) One hundred sixty (160) dosage units or more but less
35 than two hundred grams (200g) for any other Schedule I or II depressant or
36 hallucinogenic drug; or

1 (E) One hundred sixty (160) dosage units or more but less
2 than two hundred grams (200g) for any other Schedule I or II stimulant drug.

3
4 SECTION 50. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
5 to add a new section to read as follows:

6 5-64-427. Manufacture of a Schedule I or Schedule II controlled
7 substance that is not methamphetamine or cocaine.

8 (a) This section does not apply to the manufacture of methamphetamine
9 or cocaine, which is governed by § 5-64-423.

10 (b) Except as provided by this chapter, it is unlawful for a person to
11 manufacture a Schedule I or Schedule II controlled substance.

12 (c)(1) A person who violates this section upon conviction is guilty of
13 a:

14 (1) Class C felony if the person manufactured by aggregate
15 weight, including an adulterant or diluent less than:

16 (A) Two grams (2g) of a Schedule I or Schedule II
17 controlled substance that is not methamphetamine, cocaine, or a controlled
18 substance listed in this subdivision (c)(1);

19 (B) Sixty-four milligrams (64mg), or forty (40) or more
20 but less than eighty (80) dosage units of hydromorphone hydrochloride;

21 (C) Eight hundred micrograms (800µg) or eighty (80) dosage
22 units of Lysergic Acid Diethylamide (LSD);

23 (D) Eighty (80) dosage units for any other Schedule I or
24 II depressant or hallucinogenic drug; or

25 (E) Eighty (80) dosage units for any other Schedule I or
26 II stimulant drug;

27 (2) Class B felony if the person manufactured by aggregate
28 weight, including an adulterant or diluent:

29 (A) Two grams (2g) or more but less than twenty-eight
30 (28g) grams of a Schedule I or Schedule II controlled substance that is not
31 methamphetamine, cocaine, or a controlled substance listed in this
32 subdivision (c)(2);

33 (B) Sixty four milligrams (64mg) or more but less than one
34 hundred twenty eight milligrams (128mg), or eighty (80) or more but less than
35 one hundred sixty (160) dosage units of hydromorphone hydrochloride;

36 (C) Eight hundred micrograms (800µg) or more but less than

1 one thousand six hundred micrograms (1,600µg), or eighty (80) or more but
2 less than one hundred sixty (160) dosage units of Lysergic Acid Diethylamide
3 (LSD);

4 (D) Eighty (80) or more but less than one hundred sixty
5 (160) dosage units for any other Schedule I or II depressant or
6 hallucinogenic drug; or

7 (E) Eighty (80) or more but less than one hundred sixty
8 (160) dosage units for any other Schedule I or II stimulant drug; or

9 (3) Class A felony if the person manufactured by aggregate
10 weight, including an adulterant or diluent:

11 (A) Twenty-eight grams (28g) grams or more of a Schedule I
12 or Schedule II controlled substance that is not methamphetamine, cocaine, or
13 a controlled substance listed in this subdivision (c)(3);

14 (C) One hundred twenty eight milligrams (128mg) or more or
15 eighty (80) dosage units or more of hydromorphone hydrochloride;

16 (D) One thousand six hundred micrograms (1,600µg) or more
17 or one hundred sixty (160) or more dosage units of Lysergic Acid Diethylamide
18 (LSD);

19 (E) One hundred sixty (160) dosage units or more for any
20 other Schedule I or II depressant or hallucinogenic drug; or

21 (F) One hundred sixty (160) dosage units or more for any
22 other Schedule I or II stimulant drug.

23
24 SECTION 51. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter
25 4 is amended to add a new section to read as follows:

26 5-64-428. Possession of a Schedule III controlled substance with the
27 purpose to deliver.

28 (a) Except as provided by this chapter, it is unlawful if a person
29 possesses a Schedule III controlled substance with the purpose to deliver the
30 Schedule III controlled substance. Purpose to deliver may be shown by any of
31 the following factors:

32 (1) The person possesses the means to weigh, separate, or
33 package a Schedule III controlled substance; or

34 (2) The person possesses a record indicating a drug-related
35 transaction; or

36 (3) The Schedule III controlled substance is separated and

1 packaged in a manner to facilitate delivery; or

2 (4) The person possesses a firearm that is in the immediate
3 physical control of the person at the time of the possession of the Schedule
4 III controlled substance; or

5 (5) The person possesses at least two (2) other controlled
6 substances in any amount; or

7 (6) Other relevant and admissible evidence that contributes to
8 the proof that a person's purpose was to deliver a Schedule III controlled
9 substance.

10 (b) A person who violates this section upon conviction is guilty of a:

11 (1) Class C felony if the person possessed by aggregate weight,
12 including an adulterant or diluent:

13 (A) Less than twenty-eight grams (28g) of a Schedule III
14 controlled substance that is not a controlled substance listed in this
15 subdivision (b)(1);

16 (B) Forty (40) or more but less than eighty (80) dosage
17 units for any other Schedule III depressant or hallucinogenic drug; or

18 (C) Forty (40) or more but less than eighty (80) dosage
19 units for any other Schedule III stimulant drug;

20 (2) Class B felony if the person possessed by aggregate weight,
21 including an adulterant or diluent:

22 (A) Twenty-eight grams (28g) or more but less than two
23 hundred grams (200g) of a Schedule III controlled substance that is not a
24 controlled substance listed in this subdivision (b)(2);

25 (B) Eighty (80) or more but less than one hundred sixty
26 (160) dosage units for any other Schedule III depressant or hallucinogenic
27 drug; or

28 (C) Eighty (80) or more but less than one hundred sixty
29 (160) dosage units for any other Schedule III stimulant drug; or

30 (3) Class A felony if the person possessed by aggregate weight,
31 including an adulterant or diluent:

32 (A) Two hundred grams (200g) or more but less than four
33 hundred grams (400g) of a Schedule III controlled substance not a controlled
34 substance listed in this subdivision (b)(3);

35 (B) One hundred sixty (160) dosage units or more for any
36 other Schedule III depressant or hallucinogenic drug; or

1 (C) One hundred sixty (160) dosage units or more for any
2 other Schedule III stimulant drug.

3 (c) It is a defense to a prosecution under this section that the
4 person possessed less than the minimum listed amount of a Schedule III
5 controlled substance that is listed in this section.

6
7 SECTION 52. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
8 to add a new section to read as follows:

9 5-64-430. Delivery of a Schedule III controlled substance.

10 (a) Except as provided by this chapter, it is unlawful for a person to
11 deliver a Schedule III controlled substance.

12 (b)(1) A person who delivers less than twenty-eight grams (28g) by
13 aggregate weight, including an adulterant or diluent, of a Schedule III
14 controlled substance upon conviction is guilty of a Class C felony.

15 (2) A person who delivers twenty-eight grams (28g) or more but
16 less than two hundred grams (200g) by aggregate weight, including an
17 adulterant or diluent, of a Schedule III controlled substance upon conviction
18 is guilty of a Class B felony.

19 (3) A person who delivers two hundred grams (200g) or more but
20 less than four hundred grams (400g) by aggregate weight, including an
21 adulterant or diluent, of a Schedule III controlled substance upon conviction
22 is guilty of a Class A felony.

23
24 SECTION 53. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
25 to add a new section to read as follows:

26 5-64-431. Manufacture of a Schedule III controlled substance.

27 (a) Except as provided by this chapter, it is unlawful for a person to
28 manufacture a Schedule III controlled substance.

29 (b)(1) A person who manufactures less than twenty-eight grams (28g) by
30 aggregate weight, including an adulterant or diluent, of a Schedule III
31 controlled substance upon conviction is guilty of a Class C felony.

32 (2) A person who manufactures twenty-eight grams (28g) or more
33 but less than two hundred grams (200g) by aggregate weight, including an
34 adulterant or diluent, of a Schedule III controlled substance upon conviction
35 is guilty of a Class B felony.

36 (3) A person who manufactures two hundred grams (200g) or more

1 by aggregate weight, including an adulterant or diluent, of a Schedule III
 2 controlled substance upon conviction is guilty of a Class A felony.

3
 4 SECTION 54. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter
 5 4 is amended to add a new section to read as follows:

6 5-64-432. Possession of a Schedule IV or Schedule V controlled
 7 substance with the purpose to deliver.

8 (a) Except as provided by this chapter, it is unlawful if a person
 9 possesses a Schedule IV or Schedule V controlled substance with the purpose
 10 to deliver the Schedule IV or Schedule V controlled substance. Purpose to
 11 deliver may be shown by any of the following factors:

12 (1) The person possesses the means to weigh and separate a
 13 Schedule IV or Schedule V controlled substance; or

14 (2) The person possesses a record indicating a drug-related
 15 transaction; or

16 (3) The Schedule IV or Schedule V controlled substance is
 17 separated and packaged in a manner to facilitate delivery; or

18 (4) The person possesses a firearm that is in the immediate
 19 physical control of the person at the time of the possession of the Schedule
 20 IV or Schedule V controlled substance; or

21 (5) The person possesses at least two (2) other controlled
 22 substances in any amount; or

23 (6) Other relevant and admissible evidence that contributes to
 24 the proof that a person's purpose was to deliver a Schedule IV or V
 25 controlled substance.

26 (b) A person who violates this section upon conviction is guilty of a:

27 (1) Class D felony if the person possessed by aggregate weight,
 28 including an adulterant or diluent:

29 (A) Less than two hundred grams (200g) of a Schedule IV or
 30 Schedule V controlled substance that is not a controlled substance listed in
 31 this subdivision (b)(1);

32 (B) Forty (40) or more but less than eighty (80) dosage
 33 units for any other Schedule IV or Schedule V depressant or hallucinogenic
 34 drug; or

35 (C) Forty (40) or more but less than eighty (80) dosage
 36 units for any other Schedule IV or Schedule V stimulant drug;

1 (2) Class C felony if the person possessed by aggregate weight,
 2 including an adulterant or diluent:

3 (A) Two hundred grams (200g) or more but less than four
 4 hundred grams (400g) of a Schedule IV or Schedule V controlled substance that
 5 is not a controlled substance listed in this subdivision (b)(2);

6 (B) Eighty (80) or more but less than one hundred sixty
 7 (160) dosage units for any other Schedule IV or Schedule V depressant or
 8 hallucinogenic drug; or

9 (C) Eighty (80) or more but less than one hundred sixty
 10 (160) dosage units for any other Schedule IV or Schedule V stimulant drug;

11 (3) Class B felony if the person possessed by aggregate weight,
 12 including an adulterant or diluent:

13 (A) Four hundred grams (400g) or more but less than eight
 14 hundred grams (800g) of a Schedule IV or Schedule V controlled substance that
 15 is not a controlled substance listed in this subdivision (b)(3);

16 (B) One hundred sixty (160) dosage units or more but less
 17 than eight hundred grams (800g) for any other Schedule IV or Schedule V
 18 depressant or hallucinogenic drug; or

19 (C) One hundred sixty (160) dosage units or more but less
 20 than eight hundred grams (800g) for any other Schedule IV or Schedule V
 21 stimulant drug.

22 (c) It is a defense to a prosecution under this section that the
 23 person possessed less than the minimum listed amount of a Schedule IV or
 24 Schedule V controlled substance that is listed in this section.

25
 26 SECTION 55. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
 27 to add a new section to read as follows:

28 5-64-434. Delivery of a Schedule IV or Schedule V controlled
 29 substance.

30 (a) Except as provided by this chapter, it is unlawful for a person to
 31 deliver a Schedule IV or Schedule V controlled substance.

32 (b)(1) A person who delivers less than two hundred grams (200g) by
 33 aggregate weight, including an adulterant or diluent, of a Schedule IV or
 34 Schedule V controlled substance upon conviction is guilty of a Class D
 35 felony.

36 (2) A person who delivers two hundred grams (200g) or more but

1 less than four hundred grams (400g) by aggregate weight, including an
2 adulterant or diluent, of a Schedule IV or Schedule V controlled substance
3 upon conviction is guilty of a Class C felony.

4 (3) A person who delivers four hundred grams (400g) or more but
5 less than eight hundred grams (800g) by aggregate weight, including an
6 adulterant or diluent, of a Schedule IV or Schedule V controlled substance
7 upon conviction is guilty of a Class B felony.

8
9 SECTION 56. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
10 to add a new section to read as follows:

11 5-64-435. Manufacture of a Schedule IV or Schedule V controlled
12 substance.

13 (a) Except as provided by this chapter, it is unlawful for a person to
14 manufacture a Schedule IV or Schedule V controlled substance.

15 (b)(1) A person who manufactures less than two hundred grams (200g) by
16 aggregate weight, including an adulterant or diluent, of a Schedule IV or
17 Schedule V controlled substance upon conviction is guilty of a Class D
18 felony.

19 (2) A person who manufactures two hundred grams (200g) or more
20 but less than four hundred grams (400g) by aggregate weight, including an
21 adulterant or diluent, of a Schedule IV or Schedule V controlled substance
22 upon conviction is guilty of a Class C felony.

23 (3) A person who manufactures four hundred grams (400g) or more
24 by aggregate weight, including an adulterant or diluent, of a Schedule IV or
25 Schedule V controlled substance upon conviction is guilty of a Class B
26 felony.

27
28 SECTION 57. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter
29 4 is amended to add a new section to read as follows:

30 5-64-436. Possession of a Schedule VI controlled substance with the
31 purpose to deliver.

32 (a) Except as provided by this chapter, it is unlawful if a person
33 possesses a Schedule VI controlled substance with the purpose to deliver the
34 Schedule VI controlled substance. Purpose to deliver may be shown by any of
35 the following factors:

36 (1) The person possesses the means to weigh and separate a

1 Schedule VI controlled substance; or

2 (2) The person possesses a record indicating a drug-related
3 transaction; or

4 (3) The Schedule VI controlled substance is separated and
5 packaged in a manner to facilitate delivery; or

6 (4) The person possesses a firearm that is in the immediate
7 physical control of the person at the time of the possession of the Schedule
8 VI controlled substance; or

9 (5) The person possesses at least two (2) other controlled
10 substances in any amount; or

11 (6) Other relevant and admissible evidence that contributes to
12 the proof that a person's purpose was to deliver a Schedule VI controlled
13 substance.

14 (b) A person who violates this section upon conviction is guilty of a:

15 (1) Class A misdemeanor if the person possessed by aggregate
16 weight, including an adulterant or diluent fourteen grams (14g) or less of a
17 Schedule VI controlled substance;

18 (2) Class D felony if the person possessed more than fourteen
19 grams (14g) but less than four ounces (4 oz.) by aggregate weight, including
20 an adulterant or diluent of a Schedule VI controlled substance;

21 (3) Class C felony if the person possessed four ounces (4 oz.)
22 or more but less than twenty five pounds (25 lbs.) by aggregate weight,
23 including an adulterant or diluent of a Schedule VI controlled substance;

24 (4) Class B felony if the person possessed twenty five pounds
25 (25 lbs.) or more but less than one hundred pounds (100 lbs.) by aggregate
26 weight, including an adulterant or diluent of a Schedule VI controlled
27 substance; or

28 (5) Class A felony if the person possessed one hundred pounds
29 (100 lbs.) or more but less than five hundred pounds (500 lbs.) by aggregate
30 weight, including an adulterant or diluent of a Schedule VI controlled
31 substance.

32
33 SECTION 58. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
34 to add a new section to read as follows:

35 5-64-438. Delivery of a Schedule VI controlled substance.

36 (a) Except as provided by this chapter, it is unlawful for a person to

1 deliver a Schedule VI controlled substance.

2 (b)(1) A person who delivers fourteen grams (14g) or less by aggregate
3 weight, including an adulterant or diluent, of a Schedule VI controlled
4 substance upon conviction is guilty of a Class A misdemeanor.

5 (2) A person who delivers more than fourteen grams (14g) but
6 less than four ounces (4 oz.) by aggregate weight, including an adulterant or
7 diluent, of a Schedule VI controlled substance upon conviction is guilty of a
8 Class D felony.

9 (3) A person who delivers four ounces (4 oz.) or more but less
10 than twenty-five pounds (25 lbs.) by aggregate weight, including an
11 adulterant or diluent, of a Schedule VI controlled substance upon conviction
12 is guilty of a Class C felony.

13 (4) A person who delivers twenty-five pounds (25 lbs.) or more
14 but less than one hundred pounds (100 lbs.) by aggregate weight, including an
15 adulterant or diluent, of a Schedule VI controlled substance upon conviction
16 is guilty of a Class B felony.

17 (5) A person who delivers one hundred pounds (100 lbs.) or more
18 but less than five hundred pounds (500 lbs.) by aggregate weight, including
19 an adulterant or diluent, of a Schedule VI controlled substance upon
20 conviction is guilty of a Class A felony.

21
22 SECTION 59. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
23 to add a new section to read as follows:

24 5-64-439. Manufacture of a Schedule VI controlled substance.

25 (a) Except as provided by this chapter, it is unlawful for a person to
26 manufacture a Schedule VI controlled substance.

27 (b)(1) A person who manufactures fourteen grams (14g) or less by
28 aggregate weight, including an adulterant or diluent, of a Schedule VI
29 controlled substance is guilty of a Class A misdemeanor.

30 (2) A person who manufactures more than fourteen grams (14g) but
31 less than four ounces (4 oz.) by aggregate weight, including an adulterant or
32 diluent, of a Schedule VI controlled substance is guilty of a Class D felony.

33 (3) A person who manufactures four ounces (4 oz.) or more but
34 less than twenty-five pounds (25 lbs.) by aggregate weight, including an
35 adulterant or diluent, of a Schedule VI controlled substance upon conviction
36 is guilty of a Class C felony.

1 (4) A person who manufactures twenty-five pounds (25 lbs.) or
2 more but less than one hundred pounds (100 lbs.) by aggregate weight,
3 including an adulterant or diluent, of a Schedule VI controlled substance
4 upon conviction is guilty of a Class B felony.

5 (5) A person who manufactures one hundred pounds (100 lbs.) or
6 more by aggregate weight, including an adulterant or diluent, upon conviction
7 is guilty of a Class A felony.

8
9 SECTION 60. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
10 to add a new section to read as follows:

11 5-64-440. Trafficking a controlled substance.

12 (a) Except as provided by this chapter, it is unlawful for a person to
13 engage in trafficking a controlled substance.

14 (b) A person engages in trafficking a controlled substance if he or
15 she possesses a controlled substance by aggregate weight, including an
16 adulterant or diluent, in the following amounts:

17 (1) Methamphetamine or cocaine, two hundred grams (200g) or
18 more;

19 (2) Schedule I or Schedule II controlled substance that is not
20 methamphetamine or cocaine, two hundred grams (200g) or more;

21 (3) Schedule III controlled substance, four hundred grams (400g)
22 or more;

23 (4) Schedule IV or Schedule V controlled substance, eight
24 hundred grams (800g) or more; or

25 (5) A Schedule VI controlled substance, five hundred pounds (500
26 lbs.) or more.

27 (c) Trafficking a controlled substance is a Class Y felony.

28
29 SECTION 61. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
30 to add a new section to read as follows:

31 5-64-441. Possession of a counterfeit substance.

32 (a) It is unlawful for any person to possess a counterfeit substance
33 unless the counterfeit substance was obtained:

34 (1) Directly from or pursuant to a valid prescription or an
35 order of a practitioner while acting in the course of his or her professional
36 practice; or

1 (2) As otherwise authorized by this chapter.

2 (b) Any person who violates this section with respect to:

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

5 (2) Any other controlled substance, first offense or second
6 offense, upon conviction is guilty of a Class A misdemeanor; and

7 (3) Any other controlled substance, third or subsequent offense,
8 upon conviction is guilty of a Class D felony.

9 (c) For purposes of subsection (b) of this section, an offense is
10 considered a third or subsequent offense if, before his or her conviction for
11 the offense, the person has been convicted two (2) or more times for an
12 offense under subsection (b) of this section or under any equivalent penal
13 statute of the United States or of any state.

14

15 SECTION 62. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
16 to add a new section to read as follows:

17 5-64-442. Delivery or manufacture of a counterfeit substance.

18 (a) Except as authorized by this chapter, it is unlawful for any
19 person to deliver or manufacture a counterfeit substance.

20 (b) Any person who violates this subsection with respect to:

21 (1) A counterfeit substance purporting to be a Schedule I or
22 Schedule II controlled substance upon conviction is guilty of a Class C
23 felony;

24 (2) A counterfeit substance purporting to be a Schedule III
25 controlled substance upon conviction is guilty of a Class D felony; or

26 (3) A counterfeit substance purporting to be a Schedule IV-VI
27 controlled substance or that is not classified as a scheduled controlled
28 substance upon conviction is guilty of a Class A misdemeanor.

29

30 SECTION 63. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
31 to add a new section to read as follows:

32 5-64-443. Drug paraphernalia.

33 (a) A person who possesses drug paraphernalia with the purpose to use
34 the drug paraphernalia to plant, propagate, cultivate, grow, harvest,
35 manufacture, compound, convert, produce, process, prepare, test, analyze,
36 pack, repack, store, contain, or conceal a controlled substance or to inject,

1 ingest, inhale a controlled substance, or otherwise introduce into the human
2 body a controlled substance in violation of this chapter upon conviction is
3 guilty of a Class A misdemeanor except:

4 (1) If the controlled substance is methamphetamine or cocaine,
5 the person upon conviction is guilty of a:

6 (A) Class D felony if the drug paraphernalia is intended
7 to be used to inject, ingest, inhale, or otherwise introduce into the human
8 body methamphetamine or cocaine;

9 (B) Class B felony if the drug paraphernalia is capable of
10 producing or manufacturing ten (10g) or less of methamphetamine or cocaine;
11 or

12 (C) Class A felony if the drug paraphernalia is capable of
13 producing or manufacturing more than ten (10g) of methamphetamine or cocaine;

14 (2) If the controlled substance is a Schedule I or Schedule II
15 controlled substance that is not methamphetamine or cocaine, the person upon
16 conviction is guilty of a:

17 (A) Class D felony if the drug paraphernalia is capable of
18 producing or manufacturing less than two grams (2g) of the Schedule I or
19 Schedule II controlled substance;

20 (B) Class C felony if the drug paraphernalia is capable of
21 producing or manufacturing two grams (2g) or more but less than twenty-eight
22 grams (28g) of the Schedule I or Schedule II controlled substance;

23 (C) Class B felony if the drug paraphernalia is capable of
24 producing or manufacturing twenty-eight grams (28g) or more but less than two
25 hundred grams (200g) of the Schedule I or Schedule II controlled substance;
26 or

27 (D) Class A felony if the drug paraphernalia is capable of
28 producing or manufacturing two hundred grams (200g) or more of the Schedule I
29 or Schedule II controlled substance;

30 (3) If the controlled substance is a Schedule III controlled
31 substance, the person upon conviction is guilty of a:

32 (A) Class D felony if the drug paraphernalia is capable of
33 producing or manufacturing less than twenty-eight grams (28g) of the Schedule
34 III controlled substance;

35 (B) Class C felony if the drug paraphernalia is capable of
36 producing or manufacturing twenty-eight grams (28g) or more but less than two

1 hundred grams (200g) of the Schedule III controlled substance;

2 (C) Class B felony if the drug paraphernalia is capable of
3 producing or manufacturing two hundred grams (200g) or more but less than
4 four hundred grams (400g) of the Schedule III controlled substance; or

5 (D) Class A felony if the drug paraphernalia is capable of
6 producing or manufacturing four hundred grams (400g) or more of the Schedule
7 III controlled substance;

8 (4) If the controlled substance is a Schedule IV or Schedule V
9 controlled substance, the person upon conviction is guilty of a:

10 (A) Class D felony if the drug paraphernalia is capable of
11 producing or manufacturing less than two hundred grams (200g) of the Schedule
12 IV or Schedule V controlled substance;

13 (B) Class C felony if the drug paraphernalia is capable of
14 producing or manufacturing two hundred grams (200g) or more but less than
15 four hundred grams (400g) of the Schedule IV or Schedule V controlled
16 substance;

17 (C) Class B felony if the drug paraphernalia is capable of
18 producing or manufacturing four hundred grams (400g) or more but less than
19 eight hundred grams (800g) of the Schedule IV or Schedule V controlled
20 substance; or

21 (D) Class A felony if the drug paraphernalia is capable of
22 producing or manufacturing eight hundred grams (800g) or more of the Schedule
23 IV or Schedule V controlled substance; or

24 (5) If the controlled substance is a Schedule VI controlled
25 substance, the person upon conviction is guilty of a:

26 (A) Class B misdemeanor if the drug paraphernalia is
27 capable of producing or manufacturing less than fourteen grams (14g) of the
28 Schedule VI controlled substance;

29 (B) Class A misdemeanor if the drug paraphernalia is
30 capable of producing or manufacturing fourteen grams (14g) or more but less
31 than four ounces (4 oz.) of the Schedule VI controlled substance;

32 (C) Class D felony if the drug paraphernalia is capable of
33 producing or manufacturing four ounces (4 oz.) or more but less than ten
34 pounds (10 lbs.) of the Schedule VI controlled substance;

35 (D) Class C felony if the drug paraphernalia is capable of
36 producing or manufacturing ten pounds (10 lbs.) or more but less than twenty

1 five pounds (25 lbs.) of the Schedule VI controlled substance;

2 (E) Class B felony if the drug paraphernalia is capable of
 3 producing or manufacturing twenty five pounds (25 lbs.) or more but less than
 4 five hundred pounds (500 lbs.) of the Schedule VI controlled substance; or

5 (F) Class A felony if the drug paraphernalia is capable of
 6 producing or manufacturing five hundred pounds (500 lbs.) or more of the
 7 Schedule VI controlled substance.

8
 9 SECTION 64. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
 10 to add a new section to read as follows:

11 5-64-444. Drug paraphernalia – Delivery to a minor.

12 (a) A person eighteen (18) years of age or older who violates § 5-64-
 13 443 by delivering drug paraphernalia in the course of and in furtherance of a
 14 felony violation of this chapter to a person under eighteen (18) years of age
 15 who is at least three (3) years younger than the person upon conviction is
 16 guilty of a Class B felony.

17 (b) Otherwise, a person eighteen (18) years of age or older who
 18 violates § 5-64-443 by delivering drug paraphernalia to a person under
 19 eighteen (18) years of age who is at least three (3) years younger than the
 20 person upon conviction is guilty of a Class A misdemeanor.

21
 22 SECTION 65. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
 23 to add a new section to read as follows:

24 5-64-445. Advertisement of a counterfeit substance or drug
 25 paraphernalia.

26 A person who places in any newspaper, magazine, handbill, or other
 27 publication any advertisement knowing, or under circumstances in which a
 28 person reasonably should know, that the purpose of the advertisement, in
 29 whole or in part, is to promote the sale of a counterfeit substance or of an
 30 object designed or intended for use as drug paraphernalia upon conviction is
 31 guilty of a Class C felony.

32
 33 SECTION 66. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended
 34 to add a new section to read as follows:

35 5-64-446. Civil or criminal liability.

36 (a) Civil or criminal liability shall not be imposed by this chapter

1 on any practitioner who manufactures, distributes, or possesses a counterfeit
2 substance for use by a practitioner in the course of professional practice or
3 research or for use as a placebo by a practitioner in the course of
4 professional practice or research.

5 (b)(1) A person who violates §§ 5-64-419 – 5-64-442 is liable for the
6 cost of the cleanup of the site where the person:

7 (A) Manufactured a controlled substance; or

8 (B) Possessed drug paraphernalia or a chemical for the
9 purpose of manufacturing a controlled substance.

10 (2) The person shall make restitution to the state or local
11 agency responsible for the cleanup for the cost of the cleanup under § 5-4-
12 205.

13
14 SECTION 67. Arkansas Code § 5-64-505(a)(4), regarding certain items
15 subject to forfeiture, is amended to read as follows:

16 (4) Any conveyance, including an aircraft, vehicle, or vessel, that is
17 used, or intended for use, to transport, or in any manner to facilitate the
18 transportation, for the purpose of sale or receipt of property described in
19 ~~subdivision~~ subdivisions (a)(1) or (a)(2) of this section, however:

20 (A) No conveyance used by any person as a common carrier in the
21 transaction of business as a common carrier is subject to forfeiture under
22 this section unless it appears that the owner or other person in charge of
23 the conveyance is a consenting party or privy to a violation of this chapter;

24 (B)(i) No conveyance is subject to forfeiture under this section
25 by reason of any act or omission established by the owner of the conveyance
26 to have been committed or omitted without his or her knowledge or consent.

27 (ii) Upon a showing described in subdivision (a)(4)(B)(i)
28 of this section by the owner or interest holder, the conveyance may
29 nevertheless be forfeited if the prosecuting attorney establishes that the
30 owner or interest holder either knew or should reasonably have known that the
31 conveyance would be used to transport or in any manner to facilitate the
32 transportation, for the purpose of sale or receipt, of property described in
33 ~~subdivision~~ subdivisions (a)(1) or (a)(2) of this section;

34 (C) A conveyance is not subject to forfeiture for a violation of
35 ~~§ 5-64-401(e)~~ §§ 5-64-419 and 5-64-441 ; and

36 (D) A forfeiture of a conveyance encumbered by a bona fide

1 security interest is subject to the interest of the secured party if the
2 secured party neither had knowledge of nor consented to the act or omission;

3
4 SECTION 68. Arkansas Code § 5-64-505(a)(8), regarding certain items
5 subject to forfeiture, is amended to read as follows:

6 (8) Real property may be forfeited under this chapter if it
7 substantially assisted in, facilitated in any manner, or was used or intended
8 for use in the commission of any act prohibited by this chapter, however:

9 (A) No real property is subject to forfeiture under this chapter
10 by reason of any act or omission established by the owner of the real
11 property by a preponderance of the evidence to have been committed or omitted
12 without his or her knowledge or consent;

13 (B) Real property is not subject to forfeiture for a violation
14 of ~~§ 5-64-401(e)~~ § 5-64-419, if the offense is a Class C felony or less, or §
15 5-64-441;

16 (C) A forfeiture of real property encumbered by a mortgage or
17 other lien is subject to the interest of the secured party if the secured
18 party neither had knowledge of nor consented to the unlawful act or omission;

19 (D) Upon conviction, when the circuit court having jurisdiction
20 over the real property seized finds upon a hearing by a preponderance of the
21 evidence that grounds for a forfeiture exist under this section, the court
22 shall enter an order consistent with subsection (h) of this section;

23 (E) When any court orders a forfeiture of real property ~~pursuant~~
24 ~~to~~ under this chapter, the order shall be filed of record on the day issued
25 and shall have prospective effect only;

26 (F) A forfeiture of real property ordered under a provision of
27 this chapter does not affect the title of a bona fide purchaser who purchased
28 the real property prior to the issuance of the order, and the order has no
29 force or effect on the title of the bona fide purchaser; and

30 (G) Any lis pendens filed in connection with any action pending
31 under a provision of this chapter that might result in the forfeiture of real
32 property is operative only from the time filed and has no retroactive effect.

33
34 SECTION 69. Arkansas Code § 5-64-1102 is amended to read as follows:

35 5-64-1102. Possession with ~~intent~~ purpose to manufacture – Unlawful
36 distribution.

1 (a)(1) It is unlawful for a person to possess ephedrine,
2 pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or
3 salts of optical isomers with ~~intent~~ purpose to manufacture methamphetamine.

4 (2) ~~Any A~~ person who violates a ~~provision~~ of subdivision (a)(1)
5 of this section upon conviction is guilty of a:

6 (A) Class D felony if the quantity of substances listed in
7 subdivision (a)(1) of this section is capable of producing ten grams (10g) or
8 less of methamphetamine; or

9 (B) Class B felony if the quantity of substances listed in
10 subdivision (a)(1) of this section is capable of producing more than ten
11 grams (10g) of methamphetamine.

12 (b)(1) It is unlawful for a person to possess ephedrine,
13 pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or
14 salts of optical isomers in a quantity capable of producing twenty-eight
15 grams (28g) or more of a Schedule I or Schedule II controlled substance that
16 is a narcotic drug or methamphetamine with purpose to manufacture
17 methamphetamine.

18 (2) A person who violates subdivision (b)(1) of this section
19 upon conviction is guilty of a Class B felony.

20 ~~(b)(1)(c)(1)~~ (c)(1) It is unlawful for a person to sell, transfer,
21 distribute, or dispense any product containing ephedrine, pseudoephedrine, or
22 phenylpropanolamine, or their salts, isomers, or salts of isomers if the
23 person:

24 (A) Knows that the purchaser will use the product as a
25 precursor to manufacture methamphetamine or another controlled substance; or

26 (B) Sells, transfers, distributes, or dispenses the
27 product with reckless disregard as to how the product will be used.

28 (2) ~~Any A~~ person who violates a ~~provision~~ of subdivision ~~(b)(1)~~
29 (c)(1) of this section upon conviction is guilty of a Class D felony.

30
31 SECTION 70. Arkansas Code § 5-74-106(a), regarding the crime of
32 simultaneous possession of drugs and firearms, is amended to read as follows:

33 (a) ~~No person shall~~ A person shall not unlawfully commit a felony
34 violation of ~~§ 5-64-401~~ § 5-64-419 – § 5-64-442 or unlawfully attempt,
35 solicit, or conspire to commit a felony violation of ~~§ 5-64-401~~ § 5-64-419 –
36 § 5-64-442 while in possession of:

- 1 (1) A firearm; or
- 2 (2) Any implement or weapon that may be used to inflict serious
- 3 physical injury or death, and that under the circumstances serves no apparent
- 4 lawful purpose.

5

6 SECTION 71. Arkansas Code § 9-28-409(e)(1)(T), regarding criminal

7 record and child maltreatment checks for the placement of children, is

8 amended to read as follows:

9 (T) Engaging in conduct with respect to controlled substances as

10 prohibited in the former § 5-64-401 and § 5-64-419 – § 5-64-442;

11

12 SECTION 72. Arkansas Code § 12-12-1202 is amended to read as follows:

13 12-12-1202. Information provided.

14 (a) A victim notification may be accomplished by means of the

15 computerized victim notification system established under § 12-12-1201 if

16 pursuant to:

- 17 (1) Section 12-29-114, pertaining to escape;
- 18 (2) Section 16-21-106, pertaining to assistance to victims and
- 19 witnesses of crimes;
- 20 (3) Section 16-93-204, pertaining to executive clemency;
- 21 (4) Section ~~16-93-206~~ 16-93-615, pertaining to transfer
- 22 hearings;
- 23 (5) Section 16-93-702, pertaining to parole; or
- 24 (6) Section 16-97-102, pertaining to sentencing.

25 (b) The computerized victim notification system established under §

26 12-12-1201 shall also include information about an inmate’s custody status in

27 regard to furloughs, work release, and community correction programs.

28

29 SECTION 73. Arkansas Code § 12-29-201(b), regarding meritorious good

30 time, is amended to read as follows:

31 (b) An inmate transferred or paroled to the supervision of the

32 Department of Community Correction under ~~§ 16-93-206~~ § 16-93-615 may receive

33 meritorious good time reducing his or her time of transfer or parole

34 supervision up to thirty (30) days for each month he or she is under the

35 supervision of the Department of Community Correction.

36

1 SECTION 74. Arkansas Code § 12-29-202(e), regarding the awarding of
2 meritorious good time, is amended to read as follows:

3 (e) ~~In no event shall the awarding of meritorious~~ Meritorious good
4 time awarded under subdivision (d)(1) of this section shall not be applicable
5 to persons sentenced under ~~§ 16-93-611(a)(1)(A)-(E)~~ § 16-93-618.

6
7 SECTION 75. Arkansas Code § 12-29-404 is amended to read as follows:

8 12-29-404. ~~Incurable diseases~~ Medical parole for a terminal illness or
9 permanent incapacitation.

10 ~~(a) When in the independent opinions of a prison physician and a~~
11 ~~consultant physician from the community, an inmate has an incurable illness~~
12 ~~which, on the average, will result in death within twelve (12) months, or~~
13 ~~when an inmate is permanently physically or mentally incapacitated to the~~
14 ~~degree that the community criteria are met for placement in a nursing home,~~
15 ~~rehabilitation facility, or similar setting providing a level of care not~~
16 ~~available in the Department of Correction or the Department of Community~~
17 ~~Correction, the Director of the Department of Correction or the Director of~~
18 ~~the Department of Community Correction shall make these facts known to the~~
19 ~~Parole Board.~~

20 (a) As used in this section:

21 (1) "Permanently incapacitated" means, as determined by a
22 licensed physician, that an inmate:

23 (A) Has a medical condition that is not necessarily
24 terminal but renders him or her permanently and irreversibly incapacitated;
25 and

26 (B) Requires immediate and long-term care; and

27 (2) "Terminally ill" means, as determined by a licensed
28 physician, that an inmate:

29 (A) Has an incurable condition caused by illness or
30 disease; and

31 (B) Will likely die within two (2) years due to the
32 illness or disease.

33 (b) The Director of the Department of Correction or the Director of
34 the Department of Community Correction shall communicate to the Parole Board
35 when, in the independent opinions of either a Department of Correction
36 physician or Department of Community Correction physician and a consultant

1 physician in Arkansas, an inmate is either terminally ill or permanently
2 incapacitated and should be considered for transfer to parole supervision.

3 (b)(1)(c)(1) The Upon receipt of a communication described in
4 subsection (b) of this section, the board shall assemble or request all such
5 information as is germane to ~~making a decision~~ determine whether the inmate
6 is eligible under this section for immediate transfer to parole supervision.

7 (2) If the facts warrant, and the board is satisfied that the
8 inmate's physical condition makes the inmate no longer a threat to public
9 safety, the board may ~~make~~ approve the inmate eligible for immediate transfer
10 to parole supervision.

11 (d) An inmate is not eligible for parole supervision under this
12 section if he or she is required to register as a sex offender under the Sex
13 Offender Registration Act of 1997, § 12-12-901 et seq., and:

14 (1) The inmate is assessed as a Level Three (3) offender or
15 higher; or

16 (2) A victim of one (1) or more of the inmate's sex offenses was
17 fourteen (14) years of age or younger.

18 (e) The board may revoke a person's parole supervision granted under
19 this section if the person's medical condition improves to the point that he
20 or she would initially not have been eligible for parole supervision under
21 this section.

22
23 SECTION 76. Arkansas Code § 16-90-120 is amended to read as follows:
24 16-90-120. Felony with firearm.

25 (a) Any person convicted of any offense ~~which~~ that is classified by
26 the laws of this state as a felony who employed any firearm of any character
27 as a means of committing or escaping from the felony, in the discretion of
28 the sentencing court, may be subjected to an additional period of confinement
29 in the state penitentiary for a period not to exceed fifteen (15) years.

30 (b) The period of confinement, if any, imposed ~~pursuant to~~ under this
31 section shall be in addition to any fine or penalty provided by law as
32 punishment for the felony itself. Any additional prison sentence imposed
33 under the provisions of this section, if any, shall run consecutively and not
34 concurrently with any period of confinement imposed for conviction of the
35 felony itself.

36 (c) A separate appeal may be taken to the Supreme Court from the

1 imposition of the sentence, if any, provided for by this section, and any
2 appeal shall be in the manner prescribed for appellate review of conviction
3 of criminal offenses in general. However, the sole and only question to be
4 decided upon the separate appeal shall be whether the evidence warrants a
5 finding that the defendant actually employed a firearm in the commission of,
6 or escape from commission of, the felony for which he or she stands
7 convicted.

8 (d) Any reversal of a defendant's conviction for the commission of the
9 felony shall automatically reverse the prison sentence which may be imposed
10 under this section.

11 (e)(1) For an offense committed on or after July 2, 2007,
12 notwithstanding any law allowing the award of meritorious good time or any
13 other law to the contrary, except as provided in subdivision (e)(1)(B)(ii) of
14 this section, any person who is sentenced under subsection (a) of this
15 section is not eligible for parole or community correction transfer until the
16 person serves:

17 (A) Seventy percent (70%) of the term of imprisonment to
18 which the person is sentenced under subsection (a) of this section if the
19 underlying felony was any of the following:

- 20 (i) Murder in the first degree, § 5-10-102;
- 21 (ii) Kidnapping that is a Class Y felony, § 5-11-
22 102;
- 23 (iii) Aggravated robbery, § 5-12-103;
- 24 (iv) Rape, § 5-14-103; ~~or~~
- 25 (v) Causing a catastrophe, § 5-38-202(a);
- 26 (vi) Trafficking methamphetamint, § 5-64-440(b)(1);
- 27 (vii) Manufacturing methamphetamine, § 5-64-423(a)
28 or the former § 5-64-401; or
- 29 (viii) Possession of drug paraphernalia with the
30 purpose to manufacture methamphetamine, § 5-64-443(a)(2)(B).

31 (B)(i) Except as provided in subdivision (e)(1)(B)(ii) of
32 this section, seventy percent (70%) of the term of imprisonment to which the
33 person is sentenced under subsection (a) of this section if the underlying
34 felony was any of the following:

- 35 (a) ~~Manufacture of methamphetamine, § 5-64-~~
36 ~~401(a)(1)~~ Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-

1 401; or

2 (b) Possession of drug paraphernalia with the
3 intent to manufacture methamphetamine, ~~§ 5-64-403(e)(5)~~ § 5-64-443(a)(2)(B)†;
4 or

5 (c) Trafficking methamphetamine, § 5-64-
6 440(b)(1).

7 (ii) The person is eligible for parole or community
8 correction transfer if the person serves at least fifty percent (50%) of the
9 term of imprisonment to which the person is sentenced under subsection (a) of
10 this section for the offenses listed in subdivision (e)(1)(B)(i) of this
11 section with credit for the award of meritorious good time under § 12-29-201
12 unless the person is sentenced to a term of life imprisonment. The time
13 served by any person under this subdivision (e)(1)(B)(ii) shall not be
14 reduced to less than fifty percent (50%) of the person’s original sentence
15 under subsection (a) of this section; or

16 (C) Either one-third (1/3) or one-half (1/2) of the term
17 of imprisonment to which the person is sentenced under subsection (a) of this
18 section with credit for meritorious good time and depending on the
19 seriousness determination made by the Arkansas Sentencing Commission if the
20 underlying felony was any felony not listed in subdivision (e)(1)(A) ~~or (B)~~
21 of this section.

22 (2) The sentencing court may waive subdivision (e)(1) of this
23 section if all of the following circumstances exist:

24 (A) The defendant was a juvenile when the offense was
25 committed;

26 (B) The defendant was merely an accomplice to the offense;
27 and

28 (C) The offense was committed on or after July 31, 2007.

29 (f) A person who commits the offense of possession of drug
30 paraphernalia with the intent to manufacture methamphetamine, § 5-64-443,
31 after the effective date of this act shall not be subject to the provisions
32 of this section.

33

34 SECTION 77. Arkansas Code § 16-90-122(b), regarding post-conviction
35 release of offenders, is amended to read as follows:

36 (b) A circuit judge shall not authorize the temporary release of an

1 offender under subsection (a) of this section if the offender has been found
2 guilty of or pleaded guilty or nolo contendere to a:

3 (1) Class Y felony offense listed in ~~§ 16-93-611~~ § 16-93-618; or

4 (2) Felony sex offense listed in the definition of "sex offense"
5 in § 12-12-903.

6
7 SECTION 78. Arkansas Code § 16-90-802(d), regarding powers and duties
8 of the Arkansas Sentencing Commission, is amended to read as follows:

9 (d) In furtherance of its purpose, the commission shall have the
10 following powers and duties:

11 (1)(A) The commission shall adopt an initial sentencing
12 standards grid and an offense seriousness reference table based upon the
13 statutory parameters and additional data and information gathered prior to
14 January 1, 1994.

15 (B) The commission shall also set the percentage of time
16 within parameters set by law to be served for offenses at each seriousness
17 level prior to any type of transfer or release;

18 (2)(A) The commission shall periodically review and may revise
19 the voluntary sentencing standards.

20 (B) Any revision of the standards shall be in compliance
21 with provisions applicable to rule making contained in the Arkansas
22 Administrative Procedure Act, § 25-15-201 et seq.

23 (C) Any revision of the standards shall become effective
24 as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

25 (D)(i) The revised standards will be in effect unless
26 modified by the General Assembly at its next session or until revised again
27 by the commission.

28 (ii) Any revisions by the commission shall be within
29 the statutory parameters set for the various crime classes;

30 (3) The commission may review and make recommendations for
31 revision of the Community Punishment Act, § 16-93-1201 et seq., target group
32 to the General Assembly such that nonviolent offenses and offenders are
33 routinely handled in community punishment programs;

34 (4)(A) The commission shall be in charge of strategic planning
35 for a balanced correctional plan for the state.

36 (B) The commission shall develop such a plan in

1 conjunction with the Board of Corrections.

2 (C) The commission shall monitor compliance with
3 sentencing standards, assess their impact on the correctional resources of
4 the state with the assistance of the board and determine if the standards
5 further the adopted sentencing policy goals of the state;

6 (5) The commission may review the classifications of crimes and
7 sentences and make recommendations for change when supported by information
8 that change is advisable to further the adopted sentencing policy goals of
9 the state;

10 (6)(A) The commission shall develop a research and analysis
11 system to determine the feasibility, impact on resources, and budget
12 consequences of any proposed or existing legislation affecting sentence
13 length.

14 (B) The commission shall prepare and submit to the General
15 Assembly a report on any such legislation prior to its adoption;

16 (7)(A)(i) All courts having criminal jurisdiction of felony
17 crimes shall provide to the commission in a timely manner all information
18 deemed necessary by the commission.

19 (ii) Such information shall be in the form
20 determined necessary by the commission.

21 (B) The commission shall have the authority to collect
22 from any state or local governmental entity information, data in electronic
23 or in other usable form, reports, statistics, or such other material which
24 relates to sentencing laws, policies, and practices, or impacts on
25 correctional resources or is necessary to carry out the commission's
26 functions.

27 (C) The commission may coordinate its data collection with
28 the Administrative Office of the Courts, the Arkansas Crime Information
29 Center, the various circuit clerks of the state, and the various state and
30 local correctional agencies;

31 (8) Pursuant to Under its duties outlined in this section, the
32 commission shall be a criminal justice agency, as defined in § 12-12-1001(7),
33 as its powers and duties include:

34 (A) Determining transfer eligibility;

35 (B) Gathering, analyzing, and disseminating criminal
36 history information as it relates to sentencing practices, dispositions, and

1 release criteria; and

2 (C) Determining the appropriate use of correctional and
3 rehabilitative resources of the state;

4 (9)(A) Produce annual reports regarding compliance with
5 sentencing guidelines, including the application of voluntary presumptive
6 standards, § 16-90-803, and departures from the standards, § 16-90-804.

7 (B) The report shall include:

8 (i) Data collected from each county; and

9 (ii) Both a county-by-county and statewide
10 accounting of the results including without limitation:

11 (a) Sentences to the Department of Correction
12 and Department of Community Correction;

13 (b) The average sentence length for sentences
14 by offense type and severity level according to the sentencing guidelines;

15 (c) The percentage of sentences that are an
16 upward departure from the sentencing guidelines; and

17 (d) The average number of months above the
18 recommended sentence for those sentences described in subdivision
19 (d)(9)(B)(ii)(c).

20 (C) The report filed each year after the initial report
21 submitted under this section shall include data from prior years;

22 (10) Prepare and conduct annual continuing legal education
23 seminars regarding the sentencing guidelines to be presented to judges,
24 prosecuting attorneys and their deputies, and public defenders and their
25 deputies, as so required; and

26 (11)(A) The commission shall collaborate with the Administrative
27 Office of the Courts to develop and implement an integrated sentencing
28 commitment and departure form that shall include:

29 (1) Demographic information including the race and
30 ethnicity of both the offender and the victim or victims;

31 (2) The placement decision;

32 (3) Sentence length;

33 (4) Any departure from the sentencing guidelines on
34 placement and sentence length;

35 (5) The number of months above or below the
36 presumptive sentence;

- 1 (6) Justification for the departure; and
- 2 (7) A signature space for the judge and the
- 3 prosecuting attorney to sign off on the contents of the form.

4 (B) The commission shall begin using the new form on
 5 January 1, 2012.

6 (C)(1) Forms are to be collected annually and sent to the
 7 Administrative Office of the Courts.

8 (2) Data from the forms shall be collected and
 9 submitted to the Chairs of the House Judiciary Committee and the Senate
 10 Judiciary Committee.

11

12 SECTION 79. Arkansas Code § 16-90-802(g), regarding the staffing of
 13 the Arkansas Sentencing Commission, is amended to read as follows:

14 (g)(1) Subject to the approval of the chair, the executive director
 15 shall employ such other staff and shall contract for services as ~~is~~ are
 16 necessary to assist the commission in the performance of its duties, and as
 17 funds permit.

18 (2) The executive director shall ensure that appropriate
 19 budgetary measures are taken to employ enough staff or contract for expert
 20 services and to purchase the technology needed to compile and process
 21 sentencing data from all judicial districts in a timely manner.

22

23 SECTION 80. Arkansas Code § 16-90-901(a)(1), regarding definitions in
 24 the criminal expungement statute, is amended to read as follows:

25 (a)(1) As used in §§ 5-64-407, ~~5-4-311~~, 16-90-601, 16-90-602, 16-90-
 26 605, 16-93-301 – 16-93-303, 16-93-314, and 16-93-1207, “expunge” shall mean
 27 that the record or records in question shall be sealed, sequestered, and
 28 treated as confidential in accordance with the procedures established by this
 29 subchapter.

30

31 SECTION 81. Arkansas Code § 16-90-1201(a), regarding criminal record
 32 expungement, is amended to read as follows:

33 (a) The record of a felony offense for possession of a controlled
 34 substance or counterfeit substance in violation of § 5-64-419, § 5-64-441, or
 35 the former § 5-64-401(c) shall be expunged ~~pursuant to~~ under this section.

1 SECTION 82. Arkansas Code Title 16, Chapter 90 is amended to create a
 2 new subchapter to read as follows:

3 Subchapter 13 – Earned Discharge and Completion of Sentence
 4 16-90-1301. Scope.

5 This subchapter shall apply to all applicable felony sentences entered
 6 on or after the effective date of the act.

7
 8 16-90-1302. Applicable felonies.

9 (a) The following felony offenses shall be eligible for earned
 10 discharge and completion of the sentence under this subchapter:

11 (1) All Class D, Class C, and Class B felonies, except:

12 (A) An offense for which sex offender registration is
 13 required under the Sex Offender Registration Act of 1997, § 12-12-901 et
 14 seq.;

15 (B) A felony involving violence under § 5-4-501(d)(2);

16 (C) Kidnapping, § 5-11-102;

17 (D) Manslaughter, § 5-10-104; or

18 (E) Driving while intoxicated, § 5-65-103; and

19 (2) All Class A felony controlled substance offenses, § 5-64-401
 20 et seq.

21 (b) A Class Y felony shall not be eligible for earned early discharge
 22 and completion of sentence under this subchapter.

23
 24 16-90-1303. Procedure.

25 (a) If a person is incarcerated for an eligible felony, whether by an
 26 immediate commitment or after his or her probation is revoked, and after he
 27 or she is moved to community supervision through parole or transfer by the
 28 Parole Board, or if he or she is placed on probation, he or she is
 29 immediately eligible to begin earning daily credits that shall count toward
 30 reducing the number of days he or she is otherwise required to serve until he
 31 or she has completed the sentence.

32 (b)(1) Credits equal to thirty (30) days per month for every month
 33 that the offender complies with court-ordered conditions and a set of
 34 predetermined criteria established by the Department of Community Correction
 35 in consultation with judges, prosecuting attorneys, and defense counsel shall
 36 accrue while the person is on parole or probation.

1 (2) The department shall calculate the number of days the person
2 has remaining to serve on parole or probation before that person completes
3 his or her sentence.

4 (3) The number of days shall be recalculated on a monthly basis
5 to reflect the application of any credits earned under this subchapter.

6 (c)(1)(A) The department shall have sole discretion to forfeit any
7 credits a person earns under this subchapter unless otherwise provided for in
8 this section.

9 (B) The award or forfeiture of any credits earned under
10 this subchapter is not subject to appeal or judicial review.

11 (2) A person convicted of another felony offense while on parole
12 or probation may result in the forfeiture of any credits earned under this
13 subchapter.

14
15 16-90-1304. Application.

16 (a) When a person has accumulated enough days, through a combination
17 of served and earned time equal to the total number of days of the sentence
18 imposed by the sentencing court, he or she shall have attained completion of
19 his or her sentence under this subchapter.

20 (b)(1) No less than seven (7) days before the discharge date the
21 Department of Community Correction shall submit notice to:

22 (A) The prosecuting attorney; and

23 (B) The Parole Board.

24 (2) Within fourteen (14) days of the submission of the
25 application, the prosecuting attorney or the Parole Board may file a petition
26 in the sentencing court stating any reasonable objection to early discharge
27 under this subchapter warranting the forfeiture of earned-discharge credit.

28 (3) If a petition stating an objection under subsection (b)(2)
29 of this section is lodged, the department shall immediately suspend the
30 discharge of the sentence pending a review of the evidence contained in the
31 objection by the sentencing court.

32 (4) A review shall be conducted in the sentencing court within
33 fourteen (14) days of the filing of the petition.

34 (5)(A) Upon the request of the prosecuting attorney or the
35 Parole Board, the sentencing court shall consider the objections against the
36 person based solely on the information contained in the petition.

1 (B) The sentencing court shall determine, based on a
2 preponderance of the evidence, whether the person should not be discharged
3 from the sentence because if the information contained in the petition had
4 been known to the Department of Community Correction, the department would
5 have ordered the forfeiture of any of the discharge credit earned to that
6 point or if insufficient evidence exists that would warrant the forfeiture of
7 discharge credit.

8 (C) If the sentencing court finds sufficient evidence
9 warranting a forfeiture of discharge credits, the department shall make the
10 necessary forfeiture of earned discharge credit appropriate for the type of
11 misconduct asserted in the objection.

12 (D)(1) If the sentencing court does not find sufficient
13 evidence exists that warrants forfeiture of discharge credits, the department
14 shall discharge the person immediately if the date upon which the completion
15 of the sentence occurred has passed.

16 (2) If the date for completion of the sentence has
17 not occurred, the person shall return to the status held at the point the
18 objection was filed.

19 (6) An appeal may not be taken by either party from the
20 sentencing court’s findings or the department’s decision for early discharge.

21
22 16-90-1305. Notice and effect.

23 (a) Notice of the discharge of the person’s sentence under this
24 section shall be sent to the clerk of the sentencing court.

25 (b) The clerk of the court shall send notice to the Arkansas Crime
26 Information Center.

27 (c) A person who earns discharge and completion of his or her sentence
28 under this subchapter is considered as having completed his or her sentence
29 in full and is not subject to parole or probation revocation for those
30 sentences.

31
32 SECTION 83. Arkansas Code § 16-91-110(b)(3), regarding bail bonds on
33 appeal, is amended to read as follows:

34 (3) When a criminal defendant has been found guilty, pleaded guilty,
35 or pleaded nolo contendere to a criminal offense of murder in the first
36 degree, § 5-10-102, rape, § 5-14-103, aggravated robbery, § 5-12-103, or

1 causing a catastrophe, § 5-38-202(a), or the criminal offense of kidnapping,
2 § 5-11-102, or arson, § 5-38-301, when classified as Class Y felonies, ~~or~~
3 ~~manufacturing methamphetamine in violation of § 5-64-401~~ manufacturing
4 methamphetamine, § 5-64-423(a) or the former § 5-64-401, and is sentenced to
5 death or a term of imprisonment, the court shall not release the defendant on
6 bail or otherwise pending appeal or for any reason.

7
8 SECTION 84. Arkansas Code § 16-93-101 is amended to read as follows:
9 16-93-101. Definitions.

10 As used in this act:

11 (1) Case plan" means an individualized accountability and behavior
12 change strategy for supervised individuals that:

13 (A) Targets and prioritizes the specific criminal risk factors of
14 the offender based upon his or her assessment results;

15 (B) Matches the type and intensity of supervision and treatment
16 conditions to the offender's level of risk, criminal risk factors, and
17 individual characteristics, such as gender, culture, motivational stage,
18 developmental stage, and learning style;

19 (C) Establishes a timetable for achieving specific behavioral
20 goals, including a schedule for payment of victim restitution, child support,
21 and other financial obligations; and

22 (D) Specifies positive and negative actions that will be taken in
23 response to the supervised individual's behaviors;

24 (2) "Criminal risk factors" are characteristics and behaviors that
25 affect a person's risk for committing crimes and may include without
26 limitation the following risk and criminogenic need factors:

27 (A) Antisocial personality;

28 (B) Criminal thinking;

29 (C) Criminal associates;

30 (D) Dysfunctional family;

31 (E) Low levels of employment or education; and

32 (F) Substance abuse.

33 (3) "Evidence-based practices" means policies, procedures, programs,
34 and practices proven by scientific research to reliably produce reductions in
35 recidivism;

36 (4) "Intermediate sanctions" means a non-prison accountability measure

1 imposed on an offender in response to a violation of supervision conditions.

2 Such measures may include without limitation:

3 (A) The use of electronic supervision tools;

4 (B) Drug and alcohol testing or monitoring;

5 (C) Day or evening reporting;

6 (D) Restitution;

7 (E) Forfeiture of earned discharge credits;

8 (F) Rehabilitative interventions such as substance abuse and
 9 mental health treatment;

10 (G) Reporting requirements to probation or parole officers;

11 (H) Community service or community work project;

12 (I) Secure or unsecure residential treatment facilities; and

13 (J) Short-term, intermittent incarceration.

14 (5) "Jacket review" means the review of the file of a transfer-
 15 eligible inmate located at any correctional facility in the state by an
 16 individual staff member or team of staff members of the Department of
 17 Community Correction for purposes of preparing the inmate's application for
 18 parole consideration by the Board Parole.

19 (6) "Parole" means the release of the prisoner into the community by
 20 the Parole Board prior to the expiration of his or her term, subject to
 21 conditions imposed by the board and to the supervision of the Department of
 22 Community Correction. When a court or other authority has filed a warrant
 23 against the prisoner, the board may release him or her on parole to answer
 24 the warrant of the court or authority; and

25 ~~(7)~~ (7) "Probation" means a procedure under which a defendant, found
 26 guilty upon verdict or plea, is released by the court without imprisonment,
 27 subject to conditions imposed by the court and subject to the supervision of
 28 the Department of Community Correction, but only if the supervision is
 29 requested in writing by the court;

30 (8) "Recidivism" means the return to incarceration in an Arkansas
 31 Department of Correction or Department of Community Correction community
 32 correctional facility other than a technical violator program within a three-
 33 year period;

34 (9) "Risk needs assessment review" means an examination of the results
 35 of a validated risk-needs assessment;

36 (10)(A) "Treatment" means targeted interventions that focus on

1 criminal risk factors in order to reduce the likelihood of criminal behavior.

2 (B) Treatment options may include without limitation:

3 (i) Community-based programs that are consistent with
4 evidence-based practices;

5 (ii) Cognitive behavioral programs;

6 (iii) Inpatient and outpatient substance abuse and mental
7 health programs; and

8 (iv) Other available prevention and intervention programs
9 that have been scientifically proven to reliably reduce recidivism.

10 (11) "Validated risk-needs assessment" means a determination of a
11 person's risk to reoffend and the needs that, when addressed, reduce the risk
12 to reoffend through the use of an actuarial assessment tool that assesses the
13 dynamic and static factors that drive criminal behavior.

14
15 SECTION 85. Arkansas Code § 16-93-104(a), regarding the supervision
16 fees for a person on probation or parole, is amended to read as follows:

17 (a)(1) Any offender on probation, ~~or parole, or transfer~~ under
18 supervision of the Department of Community Correction shall pay to the
19 department a monthly fee as determined by the Board of Corrections of thirty-
20 five dollars (\$35.00).

21 (2) The Director of the Department of Community Correction or
22 his or her designee shall deposit:

23 (A) Twenty-five dollars (\$25.00) of each payment ~~the~~
24 payments received into the State Treasury as special revenues credited to the
25 Community Correction Revolving Fund; and

26 (B)(i) Ten dollars (\$10.00) of each payment received into
27 the Best Practices Fund, § 19-5-1139, to ensure evidence-based programs and
28 supervision practices are available to offenders supervised on either
29 probation or parole.

30 (ii) The Board of Correction shall promulgate
31 regulations for the accounting and distribution of the Best Practices Fund to
32 ensure that:

33 (a) No less than seventy five percent (75%) of
34 the funds are used by the Department of Community Correction for direct
35 services to the offender population it supervises that have been proven,
36 through research, to reduce recidivism among the offender population served;

1 **(b) The direct services may be provided by the**
2 **Department of Community Correction, the Department of Human Services, and**
3 **community-based vendors meeting these criteria and serving offenders being**
4 **supervised by the Department of Community Correction; and**

5 **(a) No more than ten percent (10%) of the**
6 **funds are used to train staff managing the offender population in evidence-**
7 **based practices.**

8 **(3) Expenditures from the ~~fund~~ Community Correction Revolving**
9 **Fund** shall be used for continuation and expansion of community punishment
10 programs as established and approved by the Board of Corrections.

11
12 SECTION 86. Arkansas Code § 16-93-201 is amended to read as follows:
13 16-93-201. Creation – Members – Qualifications and training.

14 **(a)(1) There is created the Parole Board, to be composed of seven (7)**
15 **members to be appointed from the state at large by the Governor and confirmed**
16 **by the Senate.**

17 **(2) Seven (7) members shall be full-time officials of this**
18 **state, one (1) of whom shall be designated by the Governor as the chair of**
19 **the board.**

20 **(3) ~~Members~~ Each member shall serve a seven-year term,
21 **except that the terms shall be staggered by the Governor so that the term of**
22 **one (1) member expires each year.****

23 **(4)(A) A member must have at least a bachelor’s degree from an**
24 **accredited college or university, and the member should have no less than**
25 **five (5) years’ professional experience in one (1) of the following fields:**

- 26 **(i) Parole supervision;**
- 27 **(ii) Probation supervision;**
- 28 **(iii) Corrections;**
- 29 **(iv) Criminal justice;**
- 30 **(v) Law;**
- 31 **(vi) Law enforcement;**
- 32 **(vii) Psychology;**
- 33 **(viii) Psychiatry;**
- 34 **(ix) Sociology;**
- 35 **(x) Social work; or**
- 36 **(xi) Other related field.**

1 (B) If the member does not have at least a bachelor's
 2 degree from an accredited college or university, he or she must have no less
 3 than seven (7) years' experience in a field listed in subdivision (a)(4)(A)
 4 of this section.

5 (5)(A) A member appointed after July 1, 2011, whether or not he
 6 or she has served on the board previously, shall complete a comprehensive
 7 training course developed in compliance with guidelines from the National
 8 Institute of Corrections, the Association of Paroling Authorities
 9 International, or the American Probation and Parole Association.

10 (B) All members shall complete annual training developed
 11 in compliance with guidelines from the National Institute of Corrections, the
 12 Association of Paroling Authorities International, or the American Probation
 13 and Parole Association.

14 (C) Training components shall include an emphasis on the
 15 following subjects:

16 (i) Data-driven decision making;

17 (ii)(a) Evidence-based practice.

18 (b) As used in this section, "evidence-based
 19 practice" means practices proven through research to reduce recidivism;

20 (iii) Stakeholder collaboration; and

21 (iv) Recidivism reduction.

22 (b) If any vacancy occurs on the board prior to the expiration of a
 23 term, the Governor shall fill the vacancy for the remainder of the unexpired
 24 term, subject to confirmation by the Senate at its next regular session.

25 (c) The members of the board may receive expense reimbursement and
 26 stipends in accordance with § 25-16-901 et seq.

27 (d) Four (4) members of the board shall constitute a quorum.

28
 29 SECTION 87. Arkansas Code § 16-93-206 is amended to read as follows:
 30 16-93-206. ~~Board procedures~~ Parole revocation review - Jurisdiction.

31 ~~(a)(1) For those persons eligible for parole, the Parole Board shall~~
 32 ~~retain the power to determine which persons shall be placed on parole and to~~
 33 ~~fix the time and conditions of the parole.~~

34 ~~(2) The Parole Board shall conduct open meetings and shall make~~
 35 ~~public its findings for each eligible candidate for parole.~~

36 ~~(3) Inmate interviews may be closed to the public.~~

1 ~~(4) The Parole Board retains the right to formulate all~~
2 ~~policies, rules, and regulations regarding parole, including amendments to~~
3 ~~those previously formulated by the State Board of Parole and Community~~
4 ~~Rehabilitation.~~

5 ~~(b)(1)(A) For persons who on or after January 1, 1994, commit felonies~~
6 ~~under the provisions of a transfer date, except those enumerated in~~
7 ~~subdivision (c)(1) of this section, the Department of Correction will~~
8 ~~transfer inmates to the Department of Community Correction subject to rules~~
9 ~~and regulations promulgated by the Board of Corrections and conditions set by~~
10 ~~the Parole Board.~~

11 ~~(B) The conditions under which transfer shall occur~~
12 ~~include, but are not limited to:~~

- 13 ~~(i) Level of supervision;~~
- 14 ~~(ii) Economic fee sanction;~~
- 15 ~~(iii) Treatment program; and~~
- 16 ~~(iv) Other conditions relevant to the individual~~

17 ~~under review.~~

18 ~~(C) This review may be conducted without a hearing when:~~

- 19 ~~(i) The inmate has not received a major disciplinary~~
20 ~~report against him or her that resulted in the loss of good time;~~
- 21 ~~(ii) There has not been a request by a victim to~~
22 ~~have input on transfer conditions; and~~
- 23 ~~(iii) There is no indication in the risk needs~~
24 ~~assessment review that special conditions need to be placed on the inmate.~~

25 ~~(2)(A) When one (1) or more of the circumstances in subdivision~~
26 ~~(b)(1) of this section are present, the Parole Board shall conduct a hearing~~
27 ~~to determine the appropriateness of the inmate for transfer.~~

28 ~~(B) The Parole Board has two (2) options:~~

29 ~~(i) To transfer the individual to the Department of~~
30 ~~Community Correction accompanied by conditions of the transfer, including,~~
31 ~~but not limited to, supervision levels, programming requirements, and~~
32 ~~facility placement when appropriate; or~~

33 ~~(ii)(a) To deny the transfer based on a set of~~
34 ~~established criteria and to accompany the denial with a course of action to~~
35 ~~be undertaken by the inmate to rectify the board's concerns.~~

36 ~~(b) Upon completion of the course of action~~

1 determined by the Parole Board, after final review of the inmate's file to
2 ensure successful completion, the Parole Board shall authorize the inmate's
3 transfer to the Department of Community Correction in accordance with
4 administrative policies and procedures governing a transfer and subject to
5 conditions attached to the transfer.

6 (3) Should an inmate fail to fulfill the course of action
7 outlined by the Parole Board to facilitate transfer to the Department of
8 Community Correction, it shall be the responsibility of the inmate to
9 petition the Parole Board for rehearing.

10 (4)(A) The course of action required by the Parole Board shall
11 not be outside the current resources of the Department of Correction, nor
12 shall conditions set be outside the current resources of the Department of
13 Community Correction.

14 (B) However, the Department of Correction and the
15 Department of Community Correction shall strive to accommodate the actions
16 required by the Parole Board to the best of their ability.

17 (c)(1) A person who commits the following felonies on or after January 1,
18 1994, shall be eligible to be considered for discretionary transfer to the
19 Department of Community Correction by the Parole Board after having served
20 one third (1/3) or one half (1/2) of his or her sentence, with credit for
21 meritorious good time, depending on the seriousness determination made by the
22 Arkansas Sentencing Commission, or one half (1/2) of the time to which his or
23 her sentence is commuted by executive clemency, with credit for meritorious
24 good time:

25 (A) Any homicide, §§ 5-10-101—5-10-105;

26 (B) Sexual assault in the first degree, § 5-14-124;

27 (C) Sexual assault in the second degree, § 5-14-125;

28 (D) Battery in the first degree, § 5-13-201;

29 (E) Domestic battering in the first degree, § 5-26-303; or

30 (F) The following Class Y felonies:

31 (i) Kidnapping, § 5-11-102;

32 (ii) Rape, § 5-14-103;

33 (iii) Aggravated robbery, § 5-12-103; or

34 (iv) Causing a catastrophe, § 5-38-202(a);

35 (G) Engaging in a continuing criminal enterprise, § 5-64-

36 405; or

1 ~~(H) Simultaneous possession of drugs and firearms, § 5-74-~~
2 ~~106.~~

3 ~~(2)(A) The transfer of an offender convicted of an above listed~~
4 ~~offense is not automatic.~~

5 ~~(B) The Parole Board will have the authority to transfer~~
6 ~~such an inmate at a time when, based on a combination of its opinion and~~
7 ~~appropriate assessment by a risk needs assessment tool, there is reasonable~~
8 ~~probability that the inmate can be released without detriment to the~~
9 ~~community or the inmate.~~

10 ~~(C) After the Parole Board has fully considered and denied~~
11 ~~the transfer of an offender sentenced for committing an offense listed in~~
12 ~~subdivision (c)(1) of this section, the Parole Board may delay any~~
13 ~~reconsideration of the transfer for a maximum period of two (2) years.~~

14 ~~(3) Notification of the court, prosecutor, sheriff, and the~~
15 ~~victim or the victim's next of kin shall follow the procedures set forth~~
16 ~~below.~~

17 ~~(A)(i) Before the Parole Board shall grant any transfer,~~
18 ~~the Parole Board shall solicit the written or oral recommendations of the~~
19 ~~committing court, the prosecuting attorney, and the sheriff of the county~~
20 ~~from which the inmate was committed.~~

21 ~~(ii) If the person whose transfer is being~~
22 ~~considered by the Parole Board was convicted of one (1) of the Class Y~~
23 ~~felonies enumerated in subdivision (c)(1) of this section, the Parole Board~~
24 ~~shall also notify the victim of the crime or the victim's next of kin of the~~
25 ~~transfer hearing and shall solicit written or oral recommendations of the~~
26 ~~victim or his or her next of kin regarding the granting of the transfer~~
27 ~~unless the prosecuting attorney has notified the Parole Board at the time of~~
28 ~~commitment of the prisoner that the victim or his or her next of kin does not~~
29 ~~want to be notified of future transfer hearings.~~

30 ~~(iii) The recommendations shall not be binding upon~~
31 ~~the Parole Board in the granting of any transfer but shall be maintained in~~
32 ~~the inmate's file.~~

33 ~~(iv) When soliciting recommendations from a victim~~
34 ~~of a crime, the Parole Board shall notify the victim or his or her next of~~
35 ~~kin of the date, time, and place of the transfer hearing.~~

36 ~~(B)(i) The Parole Board shall not schedule transfer~~

1 ~~hearings at which victims or relatives of victims of crimes are invited to~~
 2 ~~appear at a facility wherein inmates are housed other than the central~~
 3 ~~administration building of the Department of Correction at Pine Bluff.~~

4 ~~(ii) Nothing herein shall be construed as~~
 5 ~~prohibiting the Parole Board from conducting transfer hearings in two (2)~~
 6 ~~sessions, one (1) at the place of the inmate's incarceration for interviews~~
 7 ~~with the inmate, the inmate's witnesses, and correctional personnel, and the~~
 8 ~~second session for victims and relatives of victims as set out in subdivision~~
 9 ~~(c)(3)(B)(i) of this section;~~

10 ~~(C)(i) At the time that any person eligible under~~
 11 ~~subdivision (c)(1) of this section is transferred by the Parole Board, the~~
 12 ~~Department of Community Correction shall give written notice of the granting~~
 13 ~~of the transfer to the sheriff, the committing court, and the chief of police~~
 14 ~~of each city of the first class of the county from which the person was~~
 15 ~~sentenced.~~

16 ~~(ii) If the person is transferred to a county other~~
 17 ~~than that from which he or she was committed, the Parole Board shall give~~
 18 ~~notice to the chief of police or marshal of the city to which he or she is~~
 19 ~~transferred, to the chief of police of each city of the first class and the~~
 20 ~~sheriff of the county to which he or she is transferred, and to the sheriff~~
 21 ~~of the county from which the person was committed; and~~

22 ~~(D)(i) It shall be the responsibility of the prosecuting~~
 23 ~~attorney of the county from which the inmate was committed to notify the~~
 24 ~~Parole Board at the time of commitment of the desire of the victim or his or~~
 25 ~~her next of kin to be notified of any future transfer hearings and to forward~~
 26 ~~to the Parole Board the last known address and telephone number of the victim~~
 27 ~~or his or her next of kin.~~

28 ~~(ii) It shall be the responsibility of the victim or~~
 29 ~~his or her next of kin to notify the Parole Board of any change in address or~~
 30 ~~telephone number.~~

31 ~~(iii) It shall be the responsibility of the victim~~
 32 ~~or his or her next of kin to notify the Parole Board after the date of~~
 33 ~~commitment of any change in regard to the desire to be notified of any future~~
 34 ~~transfer hearings.~~

35 ~~(d)(1) In all other felonies, before the Parole Board sets conditions~~
 36 ~~for transfer of an inmate to community punishment, a victim or his or her~~

1 next of kin in cases in which the victim is unable to express his or her
2 wishes, who have expressed the wish to be consulted by the Parole Board shall
3 be notified of the date, time, and place of the transfer hearing.

4 (2)(A) A victim or his or her next of kin who wishes to be
5 consulted by the Parole Board shall inform the Parole Board in writing at the
6 time of sentencing.

7 (B) A victim or his or her next of kin who does not so
8 inform the Parole Board shall not be notified by the Parole Board.

9 (3)(A) Victim input to the Parole Board shall be limited to oral
10 or written recommendations on conditions relevant to the offender under
11 review for transfer.

12 (B) The recommendations shall not be binding on the Parole
13 Board, but shall be given due consideration within the resources available
14 for transfer.

15 (e)(1) The Parole Board shall approve a set of conditions that shall
16 be applicable to all inmates transferred from the Department of Correction to
17 the Department of Community Correction.

18 (2) The set of conditions is subject to periodic review and
19 revision as the Parole Board deems necessary.

20 (f) The Parole Board shall set such conditions as necessary within the
21 range of correctional resources available at the time of transfer.

22 (g)(1) (a)(1) The Parole Board shall serve as the revocation review
23 board for any person subject to either parole or transfer from prison.

24 (2) Revocation proceedings for either parole or transfer shall
25 follow all legal requirements applicable to parole and shall be subject to
26 any additional policies, rules, and regulations set by the Parole Board.

27 (h) Decisions on parole release, courses of action applicable prior to
28 transfer, and transfer conditions to be set by the Parole Board shall be
29 based on a reasoned and rational plan developed in conjunction with an
30 accepted risk needs assessment tool such that each decision is defensible
31 based on preestablished criteria.

32
33 SECTION 88. Arkansas Code § 16-93-210 is amended to read as follows:

34 16-93-210. ~~Annual~~ Monthly performance report on parole applications and
35 outcome.

36 (a)(1) ~~Beginning July 31, 2003, and on July 31 of each year~~

1 ~~thereafter, October 1, 2011,~~ the Parole Board shall submit ~~an annual a~~
 2 monthly report to the Chairpersons of the House and Senate Judiciary
 3 Committees, the Legislative Council, the Board of Corrections, the Governor,
 4 and the Commission on Disparity in Sentencing showing the number of persons
 5 who make application for parole and those who are granted or denied parole
 6 during the ~~fiscal year~~ previous month for each criminal offense
 7 classification.

8 (2) The report shall include a breakdown by race of all persons
 9 sentenced in each criminal offense classification.

10 (3) The report shall include the reason for each denial of
 11 parole, the results of the risk-needs assessment, and the course of action
 12 that accompanies each denial pursuant to § 16-93-615(b)(2)(B)(ii).

13 (b) The board shall cooperate with and upon request make presentations
 14 and provide various reports, to the extent the board's budget will allow, to
 15 the Legislative Council concerning board policy and criteria on discretionary
 16 offender programs and services.

17
 18 SECTION 89. Arkansas Code § 16-93-211(b)(2), regarding transitional
 19 housing for inmates, is amended to read as follows:

20 (2) Subject to conditions of release and consistent with rules
 21 promulgated by the board, placement in a transitional housing facility must
 22 be preceded by:

23 (A) The provision of all applicable notices under ~~§ 16-93-206~~ §
 24 16-93-615; and

25 (B) A hearing conducted by the board.

26
 27 SECTION 90. Arkansas Code Title 16, Chapter 93, Subchapter 3 is
 28 amended to read as follows:

29 Subchapter 3 – Probation — ~~First Offenders~~ and Suspended Imposition of
 30 Sentence

31 16-93-301. ~~Definition~~ Definitions.

32 As used in ~~§§ 16-93-301—16-93-303~~ this subchapter:

33 (1) ~~the procedure, effect, and definition of “expungement” shall be in~~
 34 ~~accordance with that established in § 16-90-901 et seq~~ "Expungement" means
 35 the procedure and effect as defined in § 16-90-901(a); and

1 (2) Upon violation of a term or condition, the court may enter
2 an adjudication of guilt and proceed as otherwise provided.

3 (3) Nothing in this subsection shall require or compel any court
4 of this state to establish first offender procedures as provided in §§ 16-93-
5 301 – 16-93-303, nor shall any defendant be availed the benefit of §§ 16-93-
6 301 – 16-93-303 as a matter of right.

7 (b) Upon fulfillment of the terms and conditions of probation or upon
8 release by the court prior to the termination period thereof, the defendant
9 shall be discharged without court adjudication of guilt, whereupon the court
10 shall enter an appropriate order that shall effectively dismiss the case,
11 discharge the defendant, and expunge the record, if consistent with the
12 procedures established in § 16-90-901 et seq.

13 (c) During the period of probation described in subdivision
14 (a)(1)(A)(i) of this section, a defendant is considered as not having a
15 felony conviction except for:

16 (1) Application of any law prohibiting possession of a firearm
17 by certain persons;

18 (2) A determination of habitual offender status;

19 (3) A determination of criminal history;

20 (4) A determination of criminal history scores;

21 (5) Sentencing; and

22 (6) A purpose of impeachment as a witness under Rule 609 of the
23 Arkansas Rules of Evidence.

24 (d) After successful completion of probation placed on the defendant
25 under this section, a defendant is considered as not having a felony
26 conviction except for:

27 (1) A determination of habitual offender status;

28 (2) A determination of criminal history;

29 (3) A determination of criminal history scores;

30 (4) Sentencing; and

31 (5) A purpose of impeachment as a witness under Rule 609 of the
32 Arkansas Rules of Evidence.

33 (e) The eligibility to possess a firearm of a person whose record has
34 been expunged and sealed under this subchapter and § 16-90-901 et seq. is
35 governed by § 5-73-103.

36

1 16-93-304. Probation – First-time offenders – Arkansas Crime
 2 Information Center.

3 (a) All district court judges and circuit court judges shall
 4 immediately report to the Arkansas Crime Information Center, in the form
 5 prescribed by the center, all probations of criminal defendants under §§ 16-
 6 93-301 – 16-93-303.

7 (b) Prior to granting probation to a criminal defendant under §§ 16-
 8 93-301 – 16-93-303, the court shall query the center to determine whether the
 9 criminal defendant has previously been granted probation under the provisions
 10 of §§ 16-93-301 – 16-93-303.

11 (c) If the center determines that an individual has utilized §§ 16-93-
 12 301 – 16-93-303 more than one (1) time, the center shall notify the last
 13 sentencing judge of that fact.

14
 15 16-93-305. Probation – First time offenders – Sex offender may not
 16 reside with minor victim.

17 (a) Whenever an accused who enters a plea of guilty or nolo contendere
 18 prior to an adjudication of guilt for any sexual offense defined in § 5-14-
 19 101 et seq. or incest as defined in § 5-26-202 for a sexual offense or incest
 20 perpetrated against a minor is eligible for probation under procedures
 21 defined in § 16-93-303 or any other provision of law, as a condition of
 22 granting probation the court shall prohibit the accused, upon release, from
 23 residing in a residence with any minor unless the court makes a specific
 24 finding that the accused poses no danger to the minors residing in the
 25 residence.

26 (b) Upon violation of this condition of probation, the court may enter
 27 an adjudication of guilt and proceed as otherwise provided by law.

28
 29 16-93-306. Probation generally – Supervision.

30 (a)(1) The Director of the Department of Community Correction with the
 31 advice of the Board of Corrections shall establish written policies and
 32 procedures governing the supervision of probationers designed to enhance
 33 public safety and to assist the probationers in integrating into society.

34 (2)(A) The supervision of probationers shall be based on evidence-
 35 based practices including a validated risk-needs assessment.

36 (B) Decisions shall target the probationer’s criminal risk

1 factors with appropriate supervision and treatment.

2 (b) A probation officer shall:

3 (1) Investigate all cases referred to him or her by the
4 director, the sentencing judge, or the prosecuting attorney;

5 (2) Furnish to each probationer under his or her supervision a
6 written statement of the conditions of probation and instruct the probationer
7 that he or she must stay in compliance with the conditions of probation or
8 risk revocation under § 16-93-308;

9 (3) Develop a case plan for each individual who is assessed as a
10 moderate to high risk to reoffend based on the risk and needs assessment,
11 that targets the criminal risk factors identified in the assessment, is
12 responsive to individual characteristics, and provides supervision of
13 offenders according to that case plan.

14 (4) Stay informed of the probationer's conduct and condition
15 through visitation, required reporting, or other methods, and report to the
16 sentencing court of that information upon request;

17 (5) Use practicable and suitable methods that are consistent
18 with evidence-based practices to aid and encourage a probationer to improve
19 his or her conduct and condition and to reduce the risk of recidivism;

20 (6)(A) Conduct a validated risk-needs assessment of the
21 probationer including without limitation, criminal risk factors and specific
22 individual needs.

23 (B) The actuarial assessment shall include an initial
24 screening and, if necessary, a comprehensive assessment;

25 (7) The results of the risk-needs assessment shall assist in
26 making decisions that are consistent with evidence-based practices on the
27 type of supervision and services necessary to each parolee; and

28 (8) Receive annual training on evidence-based practices and
29 criminal risk factors, as well as instruction on how to target these factors
30 to reduce recidivism.

31 (c)(1) The department shall allocate resources, including the
32 assignment of probation officers, to focus on moderate-risk and high-risk
33 offenders as determined by the actuarial assessment provided in subdivision
34 (b)(5) of this section.

35 (2) The department shall require public and private treatment
36 and service providers that receive state funds for the treatment of or

1 service for probationers to use evidence-based programs and practices.

2 (d)(1) The department shall have the authority to sanction
 3 probationers administratively without utilizing the revocation process under
 4 § 16-93-307.

5 (2)(A) The department shall develop an intermediate sanctions
 6 procedure and grid to guide a probation officer in determining the
 7 appropriate response to a violation of conditions of supervision.

8 (B) Intermediate sanctions administered by the department
 9 are required to conform to the sanctioning grid.

10 (3) Intermediate sanctions shall include without limitation:

11 (A) Day reporting;

12 (B) Community service;

13 (C) Increased substance abuse screening and or treatment;

14 (D) Increased monitoring including electronic monitoring
 15 and home confinement;

16 (E)(i) Incarceration in a county jail for no more than
 17 seven (7) days.

18 (ii) Incarceration as an intermediate sanction shall
 19 not be used more than ten (10) times with an individual probationer, and no
 20 probationer shall accumulate more than thirty (30) days incarceration as an
 21 intermediate sanction before the probation officer recommends a violation of
 22 the person’s probation under § 16-93-307.

23
 24 16-93-307. Probation generally – Revocation hearings.

25 (a)(1) A defendant arrested for violation of suspension or probation
 26 is entitled to a preliminary hearing to determine whether there is reasonable
 27 cause to believe that he or she has violated a condition of suspension or
 28 probation.

29 (2) The preliminary hearing shall be conducted by a court having
 30 original jurisdiction to try a criminal matter as soon as practicable after
 31 arrest and reasonably near the place of the alleged violation or arrest.

32 (3) The defendant shall be given prior notice of the:

33 (A) Time and place of the preliminary hearing;

34 (B) Purpose of the preliminary hearing; and

35 (C) Condition of suspension or probation the defendant is
 36 alleged to have violated.

1 (4) Except as provided in subsection (c) of this section, the
2 defendant has the right to hear and controvert evidence against him or her
3 and to offer evidence in his or her own behalf.

4 (5)(A) If the court conducting the preliminary hearing finds
5 that there is reasonable cause to believe that the defendant has violated a
6 condition of suspension or probation, it may order the defendant to be
7 detained or it may return the defendant to supervision and may consider
8 imposing one or more intermediate sanctions in the sanctioning grid pending
9 further revocation proceedings before the court that originally suspended
10 imposition of sentence on the defendant or placed him or her on probation.

11 (B)(i) If the court conducting the preliminary hearing
12 does not find reasonable cause, it shall order the defendant released from
13 custody.

14 (ii) However, a release under subdivision
15 (a)(5)(B)(i) of this section does not bar the court that suspended imposition
16 of sentence on the defendant or placed him or her on probation from holding a
17 hearing on the alleged violation of suspension or probation or from ordering
18 that the defendant appear before it.

19 (6) The court conducting the preliminary hearing shall prepare
20 and furnish to the court that suspended imposition of sentence on the
21 defendant or placed him or her on probation a summary of the preliminary
22 hearing, including the responses of the defendant and the substance of the
23 documents and evidence given in support of revocation.

24 (b)(1) A suspension or probation shall not be revoked except after a
25 revocation hearing.

26 (2) The revocation hearing shall be conducted by the court that
27 suspended imposition of sentence on the defendant or placed him or her on
28 probation within a reasonable period of time after the defendant's arrest,
29 not to exceed sixty (60) days.

30 (3) The defendant shall be given prior written notice of the:

31 (A) Time and place of the revocation hearing;

32 (B) Purpose of the revocation hearing; and

33 (C) Condition of suspension or probation the defendant is
34 alleged to have violated.

35 (4) Except as provided in subsection (c) of this section, the
36 defendant has the right to:

- 1 (A) Hear and controvert evidence against him or her;
- 2 (B) Offer evidence in his or her own defense; and
- 3 (C) Be represented by counsel.

4 (5) If suspension or probation is revoked, the court shall
 5 prepare and furnish to the defendant a written statement of the evidence
 6 relied on and the reasons for revoking suspension or probation.

7 (c) At a preliminary hearing pursuant to subsection (a) of this
 8 section or a revocation hearing pursuant to subsection (b) of this section:

9 (1) The defendant has the right to counsel and to confront and
 10 cross-examine an adverse witness unless the court specifically finds good
 11 cause for not allowing confrontation; and

12 (2) The court may permit the introduction of any relevant
 13 evidence of the alleged violation, including a letter, affidavit, and other
 14 documentary evidence, regardless of its admissibility under the rules
 15 governing the admission of evidence in a criminal trial.

16 (d) A preliminary hearing pursuant to subsection (a) of this section
 17 is not required if:

18 (1) The defendant waives the preliminary hearing;

19 (2) The revocation is based on the defendant's commission of an
 20 offense for which he or she has been tried and found guilty in an independent
 21 criminal proceeding; or

22 (3) The revocation hearing pursuant to subsection (b) of this
 23 section is held promptly after the arrest and in the judicial district where
 24 the alleged violation occurred or where the defendant was arrested.

25
 26 16-93-308. Probation generally – Revocation.

27 (a)(1) At any time before the expiration of a period of suspension or
 28 probation, a court may summon a defendant to appear before it or may issue a
 29 warrant for the defendant's arrest.

30 (2) The warrant may be executed by any law enforcement officer.

31 (b) At any time before the expiration of a period of suspension or
 32 probation, any law enforcement officer may arrest a defendant without a
 33 warrant if the law enforcement officer has reasonable cause to believe that
 34 the defendant has failed to comply with a condition of his or her suspension
 35 or probation.

36 (c) A defendant arrested for violation of suspension or probation

1 shall be taken immediately before the court that suspended imposition of
2 sentence or, if the defendant was placed on probation, before the court
3 supervising the probation.

4 (d) If a court finds by a preponderance of the evidence that the
5 defendant has inexcusably failed to comply with a condition of his or her
6 suspension or probation, the court may revoke the suspension or probation at
7 any time prior to the expiration of the period of suspension or probation.

8 (e) A finding of failure to comply with a condition of suspension or
9 probation as provided in subsection (d) of this section may be punished as
10 contempt under § 16-10-108.

11 (f) A court may revoke a suspension or probation subsequent to the
12 expiration of the period of suspension or probation if before expiration of
13 the period:

14 (1) The defendant is arrested for violation of suspension or
15 probation;

16 (2) A warrant is issued for the defendant's arrest for violation
17 of suspension or probation;

18 (3) A petition to revoke the defendant's suspension or probation
19 has been filed if a warrant is issued for the defendant's arrest within
20 thirty (30) days of the date of filing the petition; or

21 (4) The defendant has been:

22 (A) Issued a citation in lieu of arrest under Rule 5 of
23 the Arkansas Rules of Criminal Procedure for violation of suspension or
24 probation; or

25 (B) Served a summons under Rule 6 of the Arkansas Rules of
26 Criminal Procedure for violation of suspension or probation.

27 (g)(1)(A) If a court revokes a suspension or probation, the court may
28 enter a judgment of conviction and may impose any sentence on the defendant
29 that might have been imposed originally for the offense of which he or she
30 was found guilty.

31 (B) However, any sentence to pay a fine or of
32 imprisonment, when combined with any previous fine or imprisonment imposed
33 for the same offense, shall not exceed the limits of § 5-4-201 or § 5-4-401,
34 or if applicable, § 5-4-501.

35 (2)(A) As used in this subsection, "any sentence" includes the
36 extension of a period of suspension or probation.

1 (B) If an extension of suspension or probation is made
2 upon revocation, the court is not deprived of the ability to revoke the
3 suspension or probation again should the defendant's conduct again warrant
4 revocation.

5 (h)(1) A court shall not revoke a suspension of sentence or probation
6 because of a person's inability to achieve a high school diploma, general
7 education development certificate, or gainful employment.

8 (2)(A) However, the court may revoke a suspension of sentence or
9 probation if the person fails to make a good faith effort to achieve a high
10 school diploma, general education development certificate, or gainful
11 employment.

12 (B) As used in this section a "good faith effort" means a
13 person:

14 (i) Has been enrolled in a program of instruction
15 leading to a high school diploma or a general education development
16 certificate and is attending a school or an adult education course; or

17 (ii) Is registered for employment and enrolled and
18 participating in an employment-training program with the purpose of obtaining
19 gainful employment.

20
21 16-93-309. Probation generally – Revocation hearing – Sentence
22 alternatives.

23 (a) Following a revocation hearing held under § 16-93-307 and in which
24 a defendant has been found guilty or has entered a plea of guilty or nolo
25 contendere, the court may:

26 (1) Continue the period of suspension of imposition of sentence
27 or continue the period of probation;

28 (2) Lengthen the period of suspension or the period of probation
29 within the limits set by § 5-4-306;

30 (3) Increase the fine within the limits set by § 5-4-201;

31 (4) Impose a period of confinement to be served during the
32 period of suspension of imposition of sentence or period of probation; or

33 (5) Impose any conditions that could have been imposed upon
34 conviction of the original offense.

35 (b) Following a revocation hearing in which a defendant is ordered to
36 continue on a period of suspension or a period of probation, nothing

1 prohibits the court, upon finding the defendant guilty at a subsequent
2 revocation hearing, from:

3 (1) Revoking the suspension or period of probation; and

4 (2) Sentencing the defendant to incarceration in the Department
5 of Correction.

6 (c) If the suspension or probation of a defendant is subsequently
7 revoked and the defendant is sentenced to a term of imprisonment, any period
8 of time actually spent in confinement due to the original revocation shall be
9 credited against the subsequent sentence.

10
11 16-93-310. Probation generally – Revocation – Community correction
12 program.

13 (a) When a person sentenced under a community correction program, § 5-
14 4-312, violates any terms or conditions of his or her sentence or term of
15 probation, revocation of the sentence or term of probation shall be
16 consistent with the procedures under this subchapter.

17 (b) Upon revocation, the court of jurisdiction shall determine whether
18 the offender shall remain under the jurisdiction of the court and be assigned
19 to a more restrictive community correction program, facility, or institution
20 for a period of time or committed to the Department of Community Correction.

21 (c)(1) If committed to the Department of Correction, the court shall
22 specify if the commitment is for judicial transfer of the offender to the
23 Department of Community Correction or is a regular commitment; and

24 (2)(A) The court shall commit the eligible offender to the
25 custody of the Department of Correction under this subchapter for judicial
26 transfer to the Department of Community Correction subject to the following:

27 (i) That the sentence imposed provides that the
28 offender shall serve no more than two (2) years of confinement, with credit
29 for meritorious good time, with initial placement in a Department of
30 Community Correction facility; and

31 (ii) That the initial placement in the Department of
32 Community Correction is conditioned upon the offender’s continuing
33 eligibility for Department of Community Correction placement and the
34 offender’s compliance with all applicable rules and regulations established
35 by the board for community correction programs.

36 (B) Post-prison supervision shall accompany and follow

1 programming when appropriate.

3 16-93-311. Probation generally – Restitution.

4 If the court has suspended imposition of sentence or placed a defendant
5 on probation conditioned upon the defendant’s making restitution and the
6 defendant has not satisfactorily made all of his or her payments when the
7 probation period has ended, the court may:

8 (1) Continue to assert the court’s jurisdiction over the
9 recalcitrant defendant; and

10 (2) Either:

11 (A) Extend the probation period as the court deems
12 necessary; or

13 (B) Revoke the defendant’s suspended sentence.

15 16-93-312. Probation generally – Modification.

16 (a) During a period of suspension or probation, upon the petition of a
17 probation officer or a defendant or upon the court’s own motion, a court may:

18 (1) Modify a condition imposed on the defendant;

19 (2) Impose an additional condition authorized by § 5-4-303;

20 (3) Impose an additional fine authorized by §§ 5-4-201 and 5-4-
21 303; or

22 (4) Impose a period of confinement authorized by § 5-4-304.

23 (b) Nothing in this section shall limit the Department of Community
24 Correction from authorizing sanctions within the intermediate sanctions grid
25 when warranted by the defendant’s conduct.

27 16-93-313. Probation generally – Transfer of jurisdiction.

28 (a) If a defendant during a period of probation goes from a county
29 where he or she is being supervised to another county, jurisdiction over the
30 defendant may be transferred in the discretion of the supervising court to a
31 court of comparable jurisdiction in the other county if the court in the
32 other county concurs.

33 (b) If jurisdiction over a defendant is transferred under subsection
34 (a) of this section, the court in the county to which jurisdiction is
35 transferred has any power with respect to the defendant previously possessed
36 by the transferring court.

1 (c) The procedure under this section may be repeated if a defendant
2 goes from the county where he or she is being supervised to another county
3 during the period of his or her probation.

4
5 16-93-314. Probation generally – Discharge.

6 (a)(1) The court may discharge the defendant from probation at any
7 time; or

8 (2) If a judgment of conviction was not entered by the court at
9 the time of suspension or probation and the defendant fully complies with the
10 conditions of suspension or probation for the period of suspension or
11 probation, the court shall discharge the defendant and dismiss any
12 proceedings against him or her.

13 (b)(1) Subject to the provisions of §§ 5-4-501 – 5-4-504, a person
14 against whom proceedings are discharged or dismissed under subsection (a) of
15 this section may seek to have the criminal record sealed, consistent with the
16 procedures established in § 16-90-901 et seq.

17 (2) This subsection does not apply if:

18 (A) The person applying for discharge has been convicted
19 of a sexual offense as defined by § 5-14-101 et seq.; and

20 (B) The victim was under eighteen (18) years of age.

21
22 SECTION 91. Arkansas Code § 16-93-402 is repealed.

23 ~~16-93-402. Probation officers.~~

24 ~~(a)(1) When directed by the courts, the probation officers shall~~
25 ~~report to the court on the conduct and behavior of the probationer while on~~
26 ~~probation.~~

27 ~~(2) The court may thereupon discharge the probationer from~~
28 ~~further supervision and may terminate the proceedings against him or her or~~
29 ~~may extend the probation, as shall seem advisable.~~

30 ~~(b)(1) Whenever, during the period of his or her probation, a~~
31 ~~probationer placed on probation goes from the county in which he or she is~~
32 ~~being supervised to another county, jurisdiction over him or her may be~~
33 ~~transferred, in the discretion of the court, from the court for the county~~
34 ~~from which he or she goes to the court for the other county, with the~~
35 ~~concurrence of the latter court.~~

36 ~~(2)(A) The court for the county to which jurisdiction is~~

1 transferred shall have all power with respect to the probationer that was
 2 previously possessed by the court for the county from which the transfer was
 3 made.

4 (B) Under the same conditions this process may be repeated
 5 whenever during the period of his or her probation the probationer goes from
 6 the county in which he or she is being supervised to another county.

7 (c)(1) At any time within the probation period or within the maximum
 8 probation period permitted by § 16-93-401 [repealed], the court for the
 9 county in which the probationer is being supervised or, if no longer
 10 supervised, the court for the county in which he or she was last under
 11 supervision may issue a warrant for his or her arrest for violation of
 12 probation occurring during the probation period.

13 (2) The warrant may be executed by any peace officer authorized
 14 to make arrests under the laws of the State of Arkansas.

15 (3) If the probationer is arrested in any county other than that
 16 in which he or she was last supervised, he or she shall be returned to the
 17 county in which the warrant was issued.

18 (4) As speedily as possible, the probationer shall be taken
 19 before the court having jurisdiction over him or her.

20 (5) Thereupon, the court may revoke the probation and require
 21 the probationer to serve the sentence imposed or any lesser sentence which
 22 might have been originally imposed.

23
 24 SECTION 92. Arkansas Code § 16-93-605 is repealed.

25 ~~16-93-605. Felonies committed on or after April 1, 1983 — Purpose and~~
 26 ~~construction of sections.~~

27 (a) It is the purpose and intent of this section and §§ 16-93-606 —
 28 16-93-608 to establish parole eligibility for persons convicted of felonies
 29 committed on or after April 1, 1983.

30 (b) Nothing in this section or §§ 16-93-606 — 16-93-608 shall be
 31 construed to repeal the parole eligibility laws in effect on the date
 32 criminal offenses were committed prior to April 1, 1983.

33
 34 SECTION 93. Arkansas Code § 16-93-606 is amended to read as follows:

35 16-93-606. Parole eligibility — Felonies committed on or after April
 36 1, 1983 but before January 1, 1994 — Classification of inmates.

1 (a) As used in this section, "felony" means a crime classified as
 2 Class Y, Class A, or Class B by the laws of this state.

3 (b) For the purposes of § 16-93-607 and, inmates shall be classified
 4 as follows:

5 (1) A first offender is an inmate convicted of one (1) or more
 6 felonies but who has not been incarcerated in some correctional institution
 7 in the United States, whether local, state, or federal, for a crime ~~which~~
 8 that was a felony under the laws of the jurisdiction in which the offender
 9 was incarcerated, prior to being sentenced to a correctional institution in
 10 this state for the offense or offenses for which he or she is being
 11 classified;

12 (2) A second offender is an inmate convicted of two (2) or more
 13 felonies and who has been once incarcerated in some correctional institution
 14 in the United States, whether local, state, or federal, for a crime ~~which~~
 15 that was a felony under the laws of the jurisdiction in which the offender
 16 was incarcerated, prior to being sentenced to a correctional institution in
 17 this state for the offense or offenses for which he or she is being
 18 classified;

19 (3) A third offender is an inmate convicted of three (3) or more
 20 felonies and who has been twice incarcerated in some correctional institution
 21 in the United States, whether local, state, or federal, for a crime ~~which~~
 22 that was a felony under the laws of the jurisdiction in which the offender
 23 was incarcerated, prior to being sentenced to a correctional institution in
 24 this state for the offense or offenses for which he or she is being
 25 classified; and

26 (4) A fourth offender is an inmate convicted of four (4) or more
 27 felonies and who has been incarcerated in some correctional institution in
 28 the United States, whether local, state, or federal, three (3) or more times
 29 for a crime ~~which~~ that was a felony under the laws of the jurisdiction in
 30 which the offender was incarcerated, prior to being sentenced to a
 31 correctional institution in this state for the offense or offenses for which
 32 he or she is being classified.

33
 34 SECTION 94. Arkansas Code § 16-93-607 is amended to read as follows.

35 16-93-607. Parole eligibility – Felonies committed on or after April
 36 1, 1983 — ~~Parole eligibility~~ but before January 1, 1994.

1 (a) As used in this section, "felony" means a crime classified as
2 Class Y, Class A, or Class B by the laws of this state.

3 (b) A person who committed a felony prior to April 1, 1983, and who
4 were convicted and incarcerated for that felony, shall be eligible for
5 release on parole in accordance with the parole eligibility law in effect at
6 the time the crime was committed.

7 (c) A person who commits felonies on or after April 1, 1983, and who
8 shall be convicted and incarcerated for that felony, shall be eligible for
9 release on parole as follows:

10 (1) An inmate under sentence of death or life imprisonment
11 without parole is not eligible for release on parole but may be pardoned or
12 have their sentence commuted by the Governor, as provided by law. An inmate
13 sentenced to life imprisonment is not eligible for release on parole unless
14 the sentence is commuted to a term of years by executive clemency. Upon
15 commutation, the inmate is eligible for release on parole as provided in this
16 section;

17 (2) An inmate classified as a first offender under § 16-93-606,
18 except one under the age of twenty-one (21) years as described in subsection
19 (d) of this section and except one who pleads guilty or has been convicted of
20 a Class Y felony, upon entering a correctional institution in this state
21 under sentence from a circuit court, is not eligible for release on parole
22 until a minimum of one-third (1/3) of the time to which the sentence is
23 commuted by executive clemency is served, with credit for good-time
24 allowances. However, if the trier of fact determines that a deadly weapon was
25 used in the commission of the crime, a first offender twenty-one (21) years
26 of age or older is not eligible for release on parole until a minimum of one-
27 half ($\frac{1}{2}$) of the sentence is served, with credit for good-time allowances;

28 (3) An inmate classified as a second offender under § 16-93-606
29 and one who pleads guilty or was convicted of a Class Y felony, upon entering
30 a correctional institution in this state under sentence from a circuit court,
31 is not eligible for release on parole until a minimum of one-half ($\frac{1}{2}$) of his
32 or her sentence shall have been served, with credit for good-time allowances,
33 or one-half ($\frac{1}{2}$) of the time to which the sentence is commuted by executive
34 clemency is served, with credit for good-time allowances;

35 (4) An inmate classified as a third offender under § 16-93-606,
36 upon entering a correctional institution in this state under sentence from a

1 circuit court, is not eligible for release on parole until a minimum of
2 three-fourths ($\frac{3}{4}$) of his or her sentence shall have been served, with credit
3 for good-time allowances, or three-fourths ($\frac{3}{4}$) of the time to which the
4 sentence is commuted by executive clemency shall have been served, with
5 credit for good-time allowances; and

6 (5) An inmate classified as a fourth offender under § 16-93-606,
7 upon entering a correctional institution in this state under sentence from a
8 circuit court, is not eligible for parole, but he or she shall be entitled to
9 good-time allowances as provided by law.

10 (d) Any person under the age of twenty-one (21) years who is first
11 convicted of a felony and committed to the first offender penal institution
12 or to the Department of Correction for a term of years is eligible for parole
13 at any time unless a minimum time to be served is imposed consisting of not
14 more than one-third ($\frac{1}{3}$) of the total time sentenced. In the event the
15 individual is sentenced to a minimum time to be served, he or she is eligible
16 for release on parole after serving the minimum time prescribed, with credit
17 for good-time allowances, and for commutation by the exercise of executive
18 clemency.

19 (e)(1) When any convicted felon, while on parole, is convicted of
20 another felony, the felon is to be committed to the Department of Correction
21 to serve the remainder of his or her original sentence, including any portion
22 suspended, with credit for good-time allowances. Upon conviction for the
23 subsequent felony, the court shall require the sentence for the subsequent
24 felony to be served consecutively with the sentence for the previous felony.

25 (2) Any person found guilty of a felony and placed on probation
26 or suspended sentence therefor who is subsequently found guilty of another
27 felony committed while on probation or suspended sentence is to be committed
28 to the Department of Correction to serve the remainder of his or her
29 suspended sentence plus the sentence imposed for the subsequent felony. The
30 sentence imposed for the subsequent felony is to be served consecutively with
31 the remainder of the suspended sentence.

32 (f) For parole eligibility purposes, consecutive sentences by
33 one (1) or more courts or for one (1) or more counts are to be considered as
34 a single commitment reflecting the cumulative sentence to be served.

35 (g) Nothing in this section shall be construed to reduce, lessen, or
36 in any manner take away or affect the good-time allowances earned by any

1 individual prior to April 1, 1983.

2

3 SECTION 95. Arkansas Code § 16-93-608 is amended to read as follows:

4 16-93-608. Parole eligibility - Class C or Class D felonies committed
 5 on or after April 1, 1983 but before January 1, 1994.

6 A person who commits a Class C felony or Class D felony on or after
 7 April 1, 1983, and who is incarcerated therefor is eligible for release on
 8 parole after having served one-third (1/3) of his or her sentence, with
 9 credit for good-time allowances, or one-third (1/3) of the time to which his
 10 or her sentence is commuted by executive clemency, with credit for good-time
 11 allowances.

12

13 SECTION 96. Arkansas Code § 16-93-611 is repealed.

14 ~~16-93-611. Class Y felonies.~~

15 ~~(a)(1) Notwithstanding any law allowing the award of meritorious good~~
 16 ~~time or any other law to the contrary, any person who is found guilty of or~~
 17 ~~pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(G) of this~~
 18 ~~section shall not be eligible for parole or community punishment transfer,~~
 19 ~~except as provided in subdivision (a)(3) or subsection (c) of this section,~~
 20 ~~until the person serves seventy percent (70%) of the term of imprisonment to~~
 21 ~~which the person is sentenced, including a sentence prescribed under § 5-4-~~
 22 ~~501.~~

23 ~~(A) Murder in the first degree, § 5-10-102;~~

24 ~~(B) Kidnapping, Class Y felony, § 5-11-102;~~

25 ~~(C) Aggravated robbery, § 5-12-103;~~

26 ~~(D) Rape, § 5-14-103;~~

27 ~~(E) Causing a catastrophe, § 5-38-202(a);~~

28 ~~(F) Manufacture of methamphetamine, § 5-64-401(a)(1); or~~

29 ~~(G) Possession of drug paraphernalia with the intent to~~
 30 ~~manufacture methamphetamine, § 5-64-403(e)(5).~~

31 ~~(2)(A) The seventy percent (70%) provision of subdivision (a)(1)~~
 32 ~~of this section has no application to any person who is found guilty of or~~
 33 ~~pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102,~~
 34 ~~regardless of the date of the offense.~~

35 ~~(B) The provisions of this section shall apply~~
 36 ~~retroactively to all persons presently serving a sentence for kidnapping,~~

1 ~~Class B felony, § 5-11-102.~~

2 ~~(3)(A)(i) Regardless of the date of the offense, the seventy-~~
 3 ~~percent provision under subdivision (a)(1) of this section shall include~~
 4 ~~credit for the award of meritorious good time under § 12-29-201 to any person~~
 5 ~~who is found guilty of or pleads guilty or nolo contendere to manufacture of~~
 6 ~~methamphetamine under § 5-64-401(a)(1) or possession of drug paraphernalia~~
 7 ~~with the intent to manufacture methamphetamine under § 5-64-403(e)(5).~~

8 ~~(ii) Regardless of the date of the offense, the~~
 9 ~~seventy percent provision under subdivision (a)(1) of this section may~~
 10 ~~include credit for the award of meritorious good time under § 12-29-202 to~~
 11 ~~any person who is found guilty of or pleads guilty or nolo contendere to~~
 12 ~~manufacture of methamphetamine under § 5-64-401(a)(1) or possession of drug~~
 13 ~~paraphernalia with the intent to manufacture methamphetamine under § 5-64-~~
 14 ~~403(e)(5), unless the person is sentenced to a term of life imprisonment.~~

15 ~~(B) In no event shall the time served by any person who is~~
 16 ~~found guilty of or pleads guilty or nolo contendere to manufacture of~~
 17 ~~methamphetamine under § 5-64-401(a)(1) or possession of drug paraphernalia~~
 18 ~~with the intent to manufacture methamphetamine under § 5-64-403(e)(5) be~~
 19 ~~reduced to less than fifty percent (50%) of the person's original sentence.~~

20 ~~(4)(A) When any person sentenced under subdivision (a)(3) of~~
 21 ~~this section becomes eligible for parole, the Department of Community~~
 22 ~~Correction shall send a notice of the parole hearing to the prosecuting~~
 23 ~~attorney of the judicial district or districts in which the person was found~~
 24 ~~guilty or pleaded guilty or nolo contendere to an offense listed in~~
 25 ~~subdivision (a)(1) of this section.~~

26 ~~(B) The notice shall contain the following language in 12-~~
 27 ~~point capital letters bold type: INMATE SENTENCED UNDER ARKANSAS CODE § 16-~~
 28 ~~93-611.~~

29 ~~(b) A jury may be instructed pursuant to § 16-97-103 regarding the~~
 30 ~~awarding of meritorious good time under subdivision (a)(3) of this section.~~

31 ~~(c) The sentencing judge, in his or her discretion, may waive~~
 32 ~~subsection (a) of this section under the following circumstances:~~

- 33 ~~(1) The defendant was a juvenile at the time of the offense;~~
 34 ~~(2) The juvenile was merely an accomplice to the offense; and~~
 35 ~~(3) The offense occurred on or after July 28, 1995.~~

36 ~~(d) In no event shall the awarding of meritorious good time under §~~

~~12-29-201 or § 12-29-202 be applicable to persons sentenced under subdivisions (a)(1)(A) - (E) of this section.~~

SECTION 97. Arkansas Code Title 16, Chapter 93, Subchapter 6 is amended to add a new section to read as follows:

16-93-612. Parole eligibility – Date of offense.

(a) A person’s parole eligibility shall be determined by the laws in effect at the time of the offense for which he or she is sentenced to the Department of Correction.

(b) For an offender serving a sentence for a felony committed before April 1, 1977, § 16-93-601 governs that person’s parole eligibility.

(c) For an offender serving a sentence for a felony committed between April 1, 1977, and April 1, 1983, § 16-93-604 governs that person’s parole eligibility.

(d) For an offender serving a sentence for a felony committed on or after April 1, 1983, but before January 1, 1994, § 16-93-607, governs that person’s parole eligibility.

(e) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-614 governs that person’s parole eligibility, unless otherwise noted and except:

(1) If the felony is murder in the first degree, § 5-10-102, kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the offense occurred after July 28, 1995, § 16-93-618 governs that person’s parole eligibility; or

(2) If the felony is manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, or possession of drug paraphernalia with the intent to manufacture methamphetamine, § 5-64-443(a)(2)(B), and the offense occurred after April 9, 1999, § 16-93-618 governs that person’s parole eligibility;

(f) For an offender serving a sentence for a felony committed on or after January 1, 1994, § 16-93-615 governs that person’s parole eligibility procedures.

SECTION 98. Arkansas Code Title 16, Chapter 93, Subchapter 6 is amended to add a new section to read as follows:

1 16-93-613. Parole eligibility - Class Y, Class A, or Class B
2 felonies.

3 (a) A person who commits a Class Y, Class A, or Class B felony,
4 except those drug offenses addressed in § 16-93-619 or those Class Y felonies
5 addressed in § 16-93-614 or § 16-93-618, and who shall be convicted and
6 incarcerated for that felony, shall be eligible for release on parole as
7 follows:

8 (1) An inmate under sentence of death or life imprisonment
9 without parole is not eligible for release on parole but may be pardoned or
10 have his or her sentence commuted by the Governor, as provided by law.

11 (2)(A) An inmate sentenced to life imprisonment is not eligible
12 for release on parole unless the sentence is commuted to a term of years by
13 executive clemency.

14 (B) Upon commutation, the inmate is eligible for release
15 on parole as provided in this subchapter.

16 (c) For parole eligibility purposes, consecutive sentences by one (1)
17 or more courts or for one (1) or more counts are to be considered as a single
18 commitment reflecting the cumulative sentence to be served.

19
20 SECTION 99. Arkansas Code Title 16, Chapter 93, Subchapter 6 is
21 amended to add a new section to read as follows:

22 16-93-614. Parole eligibility - Offenses committed after January 1,
23 1994.

24 (a) As used in this section and §§ 16-93-615 – 16-93-617, “felonies”
25 means those crimes classified as Class Y, Class A, Class B, Class C, Class D,
26 or unclassified felonies by the laws of this state.

27 (b)(1) A person who committed a felony before January 1, 1994, and who
28 was convicted and incarcerated for that felony shall be eligible for release
29 on parole under this section and §§ 16-93-615 – 16-93-617 in accordance with
30 the parole eligibility law in effect at the time the crime was committed.

31 (2) A person who committed a target offense under the Community
32 Punishment Act, § 16-93-1201 et seq., before January 1, 1994, and who has not
33 been sentenced to a term of incarceration may waive the right to be released
34 under the parole eligibility law in effect at the time the crime was
35 committed and shall become eligible for judicial transfer pursuant to the
36 transfer provisions provided in subdivision (c)(2) of this section.

1 (3) A person who has committed a felony who is within a target
2 group as currently defined under § 16-93-1202(10) and who is released on
3 parole shall be eligible, pursuant to rules and regulations established by
4 the Parole Board, for commitment to a community correction facility if he or
5 she is found to be in violation of any of his or her parole conditions,
6 unless the parole violation constitutes a nontarget felony offense.

7 (c) A person who commits a felony on or after January 1, 1994, and who
8 shall be convicted and incarcerated for that felony shall be eligible for
9 transfer to community correction as follows:

10 (1)(A) A inmate under sentence of death or life imprisonment
11 without parole shall not be eligible for transfer, but may be pardoned or
12 have his or her sentence commuted by the Governor as provided by law.

13 (B) An inmate sentenced to life imprisonment shall not be
14 eligible for transfer unless his or her sentence is commuted to a term of
15 years by executive clemency.

16 (C) Upon commutation, an inmate shall be eligible for
17 transfer as provided in this section;

18 (2)(A)(i)(a) An offender convicted of a target offense under the
19 Community Punishment Act, § 16-93-1201 et seq., may be committed to the
20 Department of Correction and judicially transferred to the Department of
21 Community Correction by specific provision in the commitment that the trial
22 court order such a transfer.

23 (b) No other offender is eligible for transfer
24 to a Department of Community Correction facility.

25 (ii) A copy of the commitment shall be forwarded
26 immediately to the Department of Correction and to the Department of
27 Community Correction.

28 (iii) In the event that an offender is sentenced to
29 the Department of Correction without judicial transfer on one (1) sentence
30 and concurrently sentenced to the Department of Correction with judicial
31 transfer on another sentence, the offender shall remain in the Department of
32 Correction, and the sentence with judicial transfer may be discharged in the
33 same manner as that of an offender transferred back to the Department of
34 Correction.

35 (B) The Department of Community Correction shall take over
36 supervision of the offender in accordance with the order of the court.

1 (C) The Department of Community Correction shall provide
 2 for the appropriate disposition of the offender as expeditiously as
 3 practicable under rules and regulations developed by the Board of
 4 Corrections.

5 (D) The offender shall not be transported to the
 6 Department of Correction on the initial placement in a Department of
 7 Community Correction facility pursuant to a judicial transfer.

8 (E) An offender who is transferred back to the Department
 9 of Correction for disciplinary reasons may be considered for transfer to
 10 Department of Community Correction supervision after earning good-time credit
 11 equal to one-half (½) of the remainder of his or her sentence.

12 (F) An offender who is sentenced after July 31, 2007, and
 13 who is transferred back to the Department of Correction for administrative
 14 reasons is eligible for transfer to Department of Community Correction
 15 supervision in the same manner as an offender who is sentenced to the
 16 Department of Correction without a judicial transfer to the Department of
 17 Community Correction; and

18 (3)(A) Every other classified or unclassified felon who is
 19 incarcerated therefor shall be eligible for transfer to community punishment
 20 after having served one-third (1/3) or one-half (½), with credit for
 21 meritorious good time, of his or her sentence depending on the seriousness
 22 determination made by the Arkansas Sentencing Commission, or one-half (½),
 23 with credit for meritorious good time, of the time to which his or her
 24 sentence is commuted by executive clemency.

25 (B) For example, a six-year sentence with optimal
 26 meritorious good-time credits will make the offender eligible for transfer in
 27 one (1) year if he or she is required to serve one-third (1/3) of his or her
 28 sentence, or one and one-half (1½) years if he or she is required to serve
 29 one-half (½) of his or her sentence.

30
 31 SECTION 100. Arkansas Code Title 16, Chapter 93, Subchapter 6 is
 32 amended to add a new section to read as follows:

33 16-93-615. Parole eligibility procedures - Offenses committed after
 34 January 1, 1994.

35 (a)(1)(A) An inmate under sentence for any felony, except those listed
 36 in subsection (b) of this section, shall be transferred from the Department

1 of Correction to the Department of Community Correction under this section, §
 2 16-93-614, § 16-93-616, and § 16-93-617, subject to rules promulgated by the
 3 Board of Corrections and conditions set by the Parole Board.

4 (B) The determination under subdivision (a)(1)(A) of this
 5 section shall be made by reviewing information such as the result of the
 6 risk-needs assessment to inform the decision of whether to release a person
 7 on parole by quantifying that person’s risk to reoffend, and if parole is
 8 granted, this information shall be used to set conditions for supervision.

9 (C) The Parole Board shall begin transfer release
 10 proceedings or a preliminary review under this subchapter no later than six
 11 (6) months before a person’s transfer eligibility date, and the Parole Board
 12 shall authorize jacket review procedures no later than six (6) months before
 13 a person’s transfer eligibility at all institutions holding parole-eligible
 14 inmates to prepare parole applications.

15 (D) This review may be conducted without a hearing when
 16 the inmate has not received a major disciplinary report against him or her
 17 that resulted in the loss of good time, there has not been a request by a
 18 victim to have input on transfer conditions, and there is no indication in
 19 the risk-needs assessment review that special conditions need to be placed on
 20 the inmate.

21 (2)(A) When one (1) or more of the circumstances in subdivision
 22 (a)(1) of this section are present, the Parole Board shall conduct a hearing
 23 to determine the appropriateness of the inmate for transfer.

24 (B) The Parole Board has two (2) options:

25 (i) To transfer the individual to the Department of
 26 Community Correction accompanied by notice of conditions of the transfer
 27 including without limitation:

28 (a) Supervision levels;

29 (b) Economic fee sanction;

30 (c) Treatment program;

31 (d) Programming requirements; and

32 (e) Facility placement when appropriate; or

33 (ii) To deny transfer based on a set of established
 34 criteria and to accompany the denial with a prescribed course of action to be
 35 undertaken by the inmate to rectify the Parole Board concerns.

36 (C) Upon completion of the course of action determined by

1 the Parole Board and after final review of the inmate's file to ensure
 2 successful completion, the Parole Board shall authorize the inmate's transfer
 3 to the Department of Community Correction under this section, § 16-93-614, §
 4 16-93-616, and § 16-93-617, in accordance with administrative policies and
 5 procedures governing the transfer and subject to conditions attached to the
 6 transfer.

7 (3) Should an inmate fail to fulfill the course of action
 8 outlined by the Parole Board to facilitate transfer to community correction,
 9 it shall be the responsibility of the inmate to petition the Parole Board for
 10 rehearing.

11 (4)(A) The Parole Board shall conduct open meetings and shall
 12 make public its findings for each eligible candidate for parole.

13 (B)(i) Open meetings held under subsection (a)(2)(A) of
 14 this section may be conducted through video-conference technology if the
 15 person is housed at that time in a county jail and if the technology is
 16 available.

17 (ii) Open meetings utilizing video conference
 18 technology shall be conducted in public.

19 (5) Inmate interviews may be closed to the public.

20 (b)(1) An inmate under sentence for one of the following felonies
 21 shall be eligible for discretionary transfer to the Department of Community
 22 Correction by the Parole Board after having served one-third (1/3) or one-
 23 half (1/2) of his or her sentence, with credit for meritorious good time,
 24 depending on the seriousness determination made by the Arkansas Sentencing
 25 Commission, or one-half (1/2) of the time to which his or her sentence is
 26 commuted by executive clemency, with credit for meritorious good time:

27 (A) Any homicide, §§ 5-10-101 – 5-10-105, unless the
 28 offense is listed under § 16-93-612(e)(1);

29 (B) Sexual assault in the first degree, § 5-14-124;

30 (C) Sexual assault in the second degree, § 5-14-125;

31 (D) Battery in the first degree, § 5-13-201;

32 (E) Domestic battering in the first degree, § 5-26-303; or

33 (F) The following Class Y felonies:

34 (i) Kidnapping, § 5-11-102, unless the offense is
 35 listed under § 16-93-612(e)(1);

36 (ii) Rape, § 5-14-103, unless the offense is listed

1 under § 16-93-612(e)(1);

2 (iii) Aggravated robbery, § 5-12-103, unless the
 3 offense is listed under § 16-93-612(e)(1); or

4 (iv) Causing a catastrophe, § 5-38-202(a), unless
 5 the offense is listed under § 16-93-612(e)(1);

6 (G) Engaging in a continuing criminal enterprise, § 5-64-
 7 405; or

8 (H) Simultaneous possession of drugs and firearms, § 5-74-
 9 106.

10 (2) The transfer of an offender convicted of an offense listed
 11 in subdivision (b)(1) of this section is not automatic.

12 (3)(A) Review of an inmate convicted of the enumerated offenses
 13 in subdivision (b)(1) of this section shall be based upon policies and
 14 procedures adopted by the Parole Board for the review, and the Parole Board
 15 shall conduct a risk-needs assessment review.

16 (B) The policies and procedures shall include a provision
 17 for notification of the victim or victims that a hearing shall be held and
 18 records kept of the proceedings and that there be a listing of the criteria
 19 upon which a denial may be based.

20 (4) Any transfer of an offender specified in this subsection
 21 shall be issued upon an order, duly adopted, of the Parole Board in
 22 accordance with such policies and procedures.

23 (5) After the Parole Board has fully considered and denied the
 24 transfer of an offender sentenced for committing an offense listed in
 25 subdivision (b)(1) of this section, the Parole Board may delay any
 26 reconsideration of the transfer for a maximum period of two (2) years.

27 (6) Notification of the court, prosecutor, sheriff, and the
 28 victim or the victim's next of kin for person convicted of an offense listed
 29 in subdivision (b)(1) of this section shall follow the procedures set forth
 30 below:

31 (A)(i) Before the Parole Board shall grant any transfer,
 32 the Parole Board shall solicit the written or oral recommendations of the
 33 committing court, the prosecuting attorney, and the sheriff of the county
 34 from which the inmate was committed.

35 (ii) If the person whose transfer is being
 36 considered by the Parole Board was convicted of one (1) of the offenses

1 enumerated in subdivision (b)(1) of this section, the Parole Board shall also
2 notify the victim of the crime or the victim's next of kin of the transfer
3 hearing and shall solicit written or oral recommendations of the victim or
4 his or her next of kin regarding the granting of the transfer unless the
5 prosecuting attorney has notified the Parole Board at the time of commitment
6 of the prisoner that the victim or his or her next of kin does not want to be
7 notified of future transfer hearings.

8 (iii) The recommendations shall not be binding upon
9 the Parole Board in the granting of any transfer but shall be maintained in
10 the inmate's file.

11 (iv) When soliciting recommendations from a victim
12 of a crime, the Parole Board shall notify the victim or his or her next of
13 kin of the date, time, and place of the transfer hearing;

14 (B)(i) The Parole Board shall not schedule transfer
15 hearings at which victims or relatives of victims of crimes are invited to
16 appear at a facility wherein inmates are housed other than the central
17 administration building of the Department of Correction at Pine Bluff.

18 (ii) Nothing herein shall be construed as
19 prohibiting the Parole Board from conducting transfer hearings in two (2)
20 sessions, one (1) at the place of the inmate's incarceration for interviews
21 with the inmate, the inmate's witnesses, and correctional personnel, and the
22 second session for victims and relatives of victims as set out in subdivision
23 (b)(6)(B)(i) of this section;

24 (C)(i) At the time that any person eligible under
25 subdivision (c)(1) of this section is transferred by the Parole Board, the
26 Department of Community Correction shall give written notice of the granting
27 of the transfer to the sheriff, the committing court, and the chief of police
28 of each city of the first class of the county from which the person was
29 sentenced.

30 (ii) If the person is transferred to a county other
31 than that from which he or she was committed, the Parole Board shall give
32 notice to the chief of police or marshal of the city to which he or she is
33 transferred, to the chief of police of each city of the first class and the
34 sheriff of the county to which he or she is transferred, and to the sheriff
35 of the county from which the person was committed; and

36 (D)(i) It shall be the responsibility of the prosecuting

1 attorney of the county from which the inmate was committed to notify the
2 Parole Board at the time of commitment of the desire of the victim or his or
3 her next of kin to be notified of any future transfer hearings and to forward
4 to the Parole Board the last known address and telephone number of the victim
5 or his or her next of kin.

6 (ii) It shall be the responsibility of the victim or
7 his or her next of kin to notify the Parole Board of any change in address or
8 telephone number.

9 (iii) It shall be the responsibility of the victim
10 or his or her next of kin to notify the Parole Board after the date of
11 commitment of any change in regard to the desire to be notified of any future
12 transfer hearings.

13 (c)(1) In all other felonies, before the Parole Board sets conditions
14 for transfer of an inmate to community punishment, a victim or his or her
15 next of kin in cases in which the victim is unable to express his or her
16 wishes, who has expressed the wish to be consulted by the Parole Board shall
17 be notified of the date, time, and place of the transfer hearing.

18 (2)(A) A victim or his or her next of kin who wishes to be
19 consulted by the Parole Board shall inform the Parole Board in writing at the
20 time of sentencing.

21 (B) A victim or his or her next of kin who does not so
22 inform the Parole Board shall not be notified by the Parole Board.

23 (3)(A) Victim input to the Parole Board shall be limited to oral
24 or written recommendations on conditions relevant to the offender under
25 review for transfer.

26 (B) The recommendations shall not be binding on the Parole
27 Board, but shall be given due consideration within the resources available
28 for transfer.

29 (d)(1) The Parole Board shall approve a set of conditions that shall
30 be applicable to all inmates transferred from the Department of Correction to
31 the Department of Community Correction.

32 (2) The set of conditions is subject to periodic review and
33 revision as the Parole Board deems necessary.

34 (e)(1) The course of action required by the Parole Board shall not be
35 outside the current resources of the Department of Correction nor the
36 conditions set be outside the current resources of the Department of

1 Community Correction.

2 (2) However, the Department of Correction and Department of
 3 Community Correction shall strive to accommodate the actions required by the
 4 Board of Corrections to the best of their ability.

5 (f) Transfer is not an award of clemency, and it shall not be
 6 considered as a reduction of sentence or a pardon.

7 (g) Every inmate while on transfer status shall remain in the legal
 8 custody of the Department of Correction under the supervision of the
 9 Department of Community Correction and subject to the orders of the Parole
 10 Board.

11 (h) An inmate who is sentenced under the provisions of § 5-4-501(c) or
 12 § 5-4-501(d) for a serious violent felony or a felony involving violence may
 13 be considered eligible for parole or for community correction transfer upon
 14 reaching regular parole or transfer eligibility, but only after reaching a
 15 minimum age of fifty-five (55) years.

16 (i) Decisions on parole release, courses of action applicable prior to
 17 transfer, and transfer conditions to be set by the Parole Board shall be
 18 based on a reasoned and rational plan developed in conjunction with an
 19 accepted risk needs assessment tool such that each decision is defensible
 20 based on preestablished criteria.

21
 22 SECTION 101. Arkansas Code Title 16, Chapter 93, Subchapter 6 is
 23 amended to add a new section to read as follows:

24 16-93-616. Parole eligibility procedures - Offenses committed after
 25 January 1, 1994 - Computation of sentence.

26 (a)(1) Time served for a sentence shall be deemed to begin on the day
 27 sentence is imposed, not on the day a prisoner is received by the Department
 28 of Correction.

29 (2) Time served shall continue only during the time in which an
 30 individual is actually confined in a county jail or other local place of
 31 lawful confinement or while under the custody and supervision of the
 32 Department of Correction.

33 (3) Once sentenced to the Department of Correction, the
 34 department shall retain legal custody of the inmate for the duration of the
 35 original sentence.

36 (b) The sentencing judge shall direct, when he or she imposes

1 sentence, that time already served by the defendant in jail or other place of
2 detention shall be credited against the sentence.

3
4 SECTION 102. Arkansas Code Title 16, Chapter 93, Subchapter 6 is
5 amended to add a new section to read as follows:

6 16-93-617. Parole eligibility procedures - Offenses committed after
7 January 1, 1994 - Revocation of transfer.

8 (a) In the event an offender transferred under this section, §§ 16-93-
9 614 - 16-93-616, or § 16-93-618 violates the terms or conditions of his or
10 her transfer, a hearing shall follow all applicable legal requirements and
11 shall be subject to any additional policies, rules, and regulations set by
12 the Parole Board.

13 (b)(1) In the event an offender transferred under this section and §§
14 16-93-614 - 16-93-617, or § 16-93-618 is found to be or becomes ineligible
15 for transfer into a Department of Community Correction facility, he or she
16 shall be transported to the Department of Correction to serve the remainder
17 of his sentence.

18 (2) Notice of the ineligibility and the reasons therefor shall
19 be provided to the offender, and a hearing may be requested before the board
20 if the offender contests the factual basis of the ineligibility. Otherwise,
21 the board may administratively approve the transfer to the Department of
22 Correction.

23 (c) An offender who is judicially transferred to a Department of
24 Community Correction facility and subsequently transferred back to the
25 Department of Correction by the board for disciplinary or administrative
26 reasons may not become eligible for any further transfer under § 16-93-
27 614(c)(2)(E) and (F).

28
29 SECTION 103. Arkansas Code Title 16, Chapter 93, Subchapter 6 is
30 amended to add a new section to read as follows:

31 16-93-618. Parole eligibility - Certain Class Y felony offenses and
32 certain methamphetamine offenses - Seventy percent crimes.

33 (a)(1) Notwithstanding any law allowing the award of meritorious good
34 time or any other law to the contrary, any person who is found guilty of or
35 pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(H) of this
36 section shall not be eligible for parole or community punishment transfer,

1 except as provided in subdivision (a)(3) or subsection (c) of this section,
 2 until the person serves seventy percent (70%) of the term of imprisonment to
 3 which the person is sentenced, including a sentence prescribed under § 5-4-
 4 501:

5 (A) Murder in the first degree, § 5-10-102;

6 (B) Kidnapping, Class Y felony, § 5-11-102;

7 (C) Aggravated robbery, § 5-12-103;

8 (D) Rape, § 5-14-103;

9 (E) Causing a catastrophe, § 5-38-202(a);

10 (F) Manufacturing methamphetamine, § 5-64-423(a) or the
 11 former § 5-64-401;

12 (G) Trafficking methamphetamine, § 5-64-440(b)(1); or

13 (H) Possession of drug paraphernalia with the purpose to
 14 manufacture methamphetamine, § 5-64-443(a)(2)(B).

15 (2)(A) The seventy percent (70%) provision of subdivision (a)(1)
 16 of this section has no application to any person who is found guilty of or
 17 pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102,
 18 regardless of the date of the offense.

19 (B) The provisions of this section shall apply
 20 retroactively to all persons presently serving a sentence for kidnapping,
 21 Class B felony, § 5-11-102.

22 (3)(A)(i) Regardless of the date of the offense, the seventy-
 23 percent provision under subdivision (a)(1) of this section shall include
 24 credit for the award of meritorious good time under § 12-29-201 to any person
 25 who is found guilty of or pleads guilty or nolo contendere to:

26 (a) Manufacturing methamphetamine, § 5-64-
 27 423(a) or the former § 5-64-401;

28 (b) Trafficking methamphetamine, § 5-64-
 29 440(b)(1); or

30 (c) Possession of drug paraphernalia with the
 31 purpose to manufacture methamphetamine, § 5-64-443(a)(2)(B).

32 (ii) Regardless of the date of the offense and
 33 unless the person is sentenced to a term of life imprisonment, the seventy-
 34 percent provision under subdivision (a)(1) of this section may include credit
 35 for the award of meritorious good time under § 12-29-202 to any person who is
 36 found guilty of or pleads guilty or nolo contendere to:

1 (a) Manufacturing methamphetamine, § 5-64-
2 423(a) or the former § 5-64-401;

3 (b) Trafficking methamphetamine, § 5-64-
4 440(b)(1); or

5 (c) Possession of drug paraphernalia with the
6 purpose to manufacture methamphetamine, § 5-64-443(a)(2)(B).

7 (B) In no event shall the time served by any person who is
8 found guilty of or pleads guilty or nolo contendere to manufacturing
9 methamphetamine, § 5-64-423(a) or the former § 5-64-401, trafficking
10 methamphetamine, § 5-64-440(b)(1), or possession of drug paraphernalia with
11 the purpose to manufacture methamphetamine, § 5-64-443(a)(2)(B), be reduced
12 to less than fifty percent (50%) of the person's original sentence.

13 (4)(A) When any person sentenced under subdivision (a)(3) of
14 this section becomes eligible for parole, the Department of Community
15 Correction shall send a notice of the parole hearing to the prosecuting
16 attorney of the judicial district or districts in which the person was found
17 guilty or pleaded guilty or nolo contendere to an offense listed in
18 subdivision (a)(1) of this section.

19 (B) The notice shall contain the following language in 12-
20 point capital letters bold type: "INMATE SENTENCED UNDER ARKANSAS CODE § 16-
21 93-618".

22 (b) A jury may be instructed under § 16-97-103 regarding the awarding
23 of meritorious good time under subdivision (a)(3) of this section.

24 (c) The sentencing judge, in his or her discretion, may waive
25 subsection (a) of this section under the following circumstances:

26 (1) The defendant was a juvenile at the time of the offense;

27 (2) The juvenile was merely an accomplice to the offense; and

28 (3) The offense occurred on or after July 28, 1995.

29 (d) The awarding of meritorious good time under § 12-29-201 or § 12-
30 29-202 shall not be applicable to persons sentenced under subdivisions
31 (a)(1)(A)-(H) of this section.

32 (e) A person who commits the offense of possession of drug
33 paraphernalia with the intent to manufacture methamphetamine, § 5-64-443,
34 after the effective date of this act shall not be subject to the provisions
35 of this section.

36

1 SECTION 104. Arkansas Code Title 16, Chapter 93, Subchapter 7 is
 2 amended to read as follows:

3 Subchapter 7

4 ~~– Parole – Grant or Revocation Generally~~

5 16-93-701. ~~Grant~~ Authority to grant and ~~procedures generally~~
 6 parameters.

7 (a)(1) The Parole Board may release on parole any individual eligible
 8 under the provisions of § 16-93-601 who is confined in any correctional
 9 institution administered by the Department of Correction, when in its opinion
 10 there is a reasonable probability that the prisoner can be released without
 11 detriment to the community or himself or herself.

12 (2) All paroles shall issue upon order, duly adopted, of the
 13 board.

14 (b)(1) Before ordering the release of any prisoner, the prisoner shall
 15 be interviewed by the board or a panel designated by the board and, for all
 16 parole decisions after January 1, 2012, the board shall conduct a risk-needs
 17 assessment review of all parole applicants.

18 (2)(A) The parole shall be ordered only for the best interest of
 19 society and not as an award for clemency.

20 (B) The parole shall not be considered as a reduction of
 21 sentence or a pardon.

22 (3) A prisoner shall be placed on parole only when the board
 23 believes that he or she is able and willing to fulfill the obligations of a
 24 law-abiding citizen.

25 (4) Every prisoner, while on parole, shall remain in the legal
 26 custody of the institution from which he or she was released, but shall be
 27 subject to the orders of the board.

28
 29 16-93-702. ~~Grant~~ Procedures – Required recommendations.

30 (a) Before the Parole Board shall grant any parole, the board shall
 31 solicit the written or oral recommendations of the committing court, the
 32 prosecuting attorney, and the sheriff of the county from which the inmate was
 33 committed.

34 (b) If the person whose parole is being considered by the board was
 35 convicted of capital murder, § 5-10-101, or of a Class Y, Class A, or Class B
 36 felony, or any violent or sexual offense, the board shall also notify the

1 victim of the crime, or the victim's next of kin, of the parole hearing and
2 shall solicit written or oral recommendations of the victim or the victim's
3 next of kin regarding the granting of the parole, unless the prosecuting
4 attorney has notified the board at the time of commitment of the prisoner
5 that the victim or the victim's next of kin does not want to be notified of
6 future parole hearings.

7 (c) The board shall retain a copy of the recommendations in the
8 board's file.

9 (d) The recommendations shall not be binding upon the board in the
10 granting of any parole, but shall be maintained in a file ~~which~~ that shall be
11 open to the public during reasonable business hours.

12 (e) When soliciting recommendations from a victim of a crime, the
13 board shall notify the victim or the victim's next of kin of the date, time,
14 and place of the parole hearing.

15

16 16-93-703. ~~Grant~~ Procedures - Place of hearings.

17 (a) The Parole Board shall not schedule parole hearings at which
18 victims or relatives of victims of crime are invited to appear at a facility
19 wherein inmates are housed other than the Central Administration Building of
20 the Department of Correction at Pine Bluff.

21 (b) Nothing in this section shall be construed as prohibiting the
22 board from conducting parole hearings in two (2) sessions, one (1) at the
23 place of the inmate's incarceration for interviews with the inmate, the
24 inmate's witnesses, and correctional personnel, and the second session for
25 victims and relatives of victims as set out in subsection (a) of this
26 section.

27

28 16-93-704. ~~Grant~~ Procedures - Notice to law enforcement personnel and
29 committing court.

30 (a) At the time that any person is paroled by the Parole Board, the
31 board shall give written notice of the granting of the parole to the sheriff,
32 the committing court, and the chief of police of all cities of the first
33 class of the county from which the person was sentenced.

34 (b) If the person is paroled to a county other than that from which he
35 or she was committed, the board shall give notice to the chief of police or
36 marshal of the city to which he or she is paroled, to the chief of police of

1 all cities of the first class, ~~and~~ to the sheriff of the county to which he
2 or she is paroled, and to the sheriff of the county from which the person was
3 committed.

4
5 16-93-705. Revocation - ~~Return of parole violator~~ - Hearings Procedures
6 and hearings generally.

7 (a)(1) At any time during a parolee's release on parole, the Parole
8 Board may issue a warrant for the arrest of the parolee for violation of any
9 conditions of parole or may issue a notice to appear to answer a charge of a
10 violation.

11 (2) The warrant or notice shall be served personally upon the
12 individual.

13 (3) The warrant shall authorize all officers named in the
14 warrant to place the parolee in custody at any suitable detention facility
15 pending a hearing.

16 (4) Any parole officer may arrest a parolee without a warrant or
17 may deputize any officer with power of arrest to do so by giving him or her a
18 written statement setting forth that the parolee, in the judgment of the
19 parole officer, violated conditions of his or her parole.

20 (5) The written statement delivered with the parolee by the
21 arresting officer to the official in charge of the detention facility to
22 which the parolee is brought shall be sufficient warrant for detaining him or
23 her pending disposition.

24 (6) If the board or its designee finds, by a preponderance of
25 the evidence, that the parolee has inexcusably failed to comply with a
26 condition of his or her parole, the parole may be revoked at any time prior
27 to the expiration of the period of parole.

28 (7) A parolee for whose return a warrant has been issued by the
29 board shall be deemed a fugitive from justice if it is found that the warrant
30 cannot be served.

31 (8) The board shall determine whether the time from the issuance
32 of the warrant to the date of arrest, or any part of it, shall be counted as
33 time served under the sentence.

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

1 (2) The hearing shall be conducted by the parole hearing
 2 examiner for the board as soon as practical after arrest and reasonably near
 3 the place of the alleged violation or arrest.

4 (3) The parolee shall be given prior notice of the date, time,
 5 and location of the hearing, the purpose of the hearing, and the conditions
 6 of parole he or she is alleged to have violated.

7 (4) Except as provided in subsection (d) of this section, the
 8 parolee shall have the right to hear and controvert evidence against him or
 9 her, to offer evidence in his or her own behalf, and to be represented by
 10 counsel.

11 (5) If the hearing examiner finds that there is reasonable cause
 12 to believe that the parolee has violated a condition of parole, the hearing
 13 examiner may order the parolee returned to the custody of the Department of
 14 Correction for a revocation hearing before the board.

15 (6) If the hearing examiner finds that there is reasonable cause
 16 to believe that the parolee has violated a condition of parole, the hearing
 17 examiner may return the offender to parole supervision rather than to the
 18 custody of the Department of Correction and may impose additional supervision
 19 conditions in response to the violating conduct.

20 ~~(6)~~(7) If the hearing examiner does not find reasonable cause, he
 21 or she shall order the parolee released from custody, but that action shall
 22 not bar the board from holding a hearing on the alleged violation of parole
 23 or from ordering the parolee to appear before it.

24 ~~(7)~~(8) The hearing examiner shall prepare and furnish to the
 25 board and the parolee a summary of the hearing, including the substance of
 26 the evidence and testimony considered.

27 (c)(1) A parole shall not be revoked except after a revocation
 28 hearing, which shall be conducted by the board or its designee within a
 29 reasonable period of time after the parolee's arrest.

30 (2) The parolee shall be given prior notice of the date, time,
 31 and location of the hearing, the purpose of the hearing, and the conditions
 32 of parole he or she is alleged to have violated.

33 (3) Except as provided in subsection (d) of this section, the
 34 parolee shall have the right to hear and controvert evidence against him or
 35 her, to offer evidence in his or her own defense, and to be represented by
 36 counsel.

1 (4) If parole is revoked, the board or its designee shall
 2 prepare and furnish to the parolee a written statement of evidence relied on
 3 and the reasons for revoking parole.

4 (d) At a preliminary hearing ~~pursuant to~~ under subsection (b) of this
 5 section or a revocation hearing ~~pursuant to~~ under subsection (c) of this
 6 section:

7 (1) The parolee shall have the right to confront and cross-
 8 examine adverse witnesses unless the hearing examiner or the board or its
 9 designee specifically finds good cause for not allowing confrontation; and

10 (2) The parolee may introduce any relevant evidence of the
 11 alleged violation, including letters, affidavits, and other documentary
 12 evidence, regardless of its admissibility under the rules governing the
 13 admission of evidence.

14 (e) A preliminary hearing ~~pursuant to~~ under subsection (b) of this
 15 section shall not be required if:

16 (1) The parolee waives a preliminary hearing; or

17 (2) The revocation hearing ~~pursuant to~~ under subsection (c) of
 18 this section is held promptly after the arrest and reasonably near the place
 19 where the alleged violation occurred or where the parolee was arrested.

20 (f) A preliminary hearing ~~pursuant to~~ under subsection (b) of this
 21 section and a revocation hearing ~~pursuant to~~ under subsection (c) of this
 22 section shall not be necessary if the revocation is based on the parolee's
 23 conviction, guilty plea, or plea of nolo contendere to a felony offense for
 24 which he or she is sentenced to the Department of Correction or to any other
 25 state or federal penal institution.

26
 27 16-93-706. Revocation - ~~Powers of officials and circuit courts~~ Subpoena
 28 of witnesses and documents - ~~Penalties~~.

29 (a)(1) The Chair of the Parole Board or his or her designee, the
 30 hearing officer presiding over any preliminary hearing with respect to an
 31 alleged parole violation, the administrator of the board, or any member of
 32 the board pursuant to the authority of the board to meet and determine
 33 whether to revoke parole shall have the power to issue oaths and to subpoena
 34 witnesses to appear and testify and bring before the hearing officer or the
 35 board any relevant books, papers, records, or documents.

36 (2) The subpoena shall be directed to any sheriff, coroner, or

1 constable of any county where the designated witness resides or is found.
 2 The endorsed affidavit on the subpoena of any person of full age shall be
 3 proof of the service, which shall be served and returned in the same manner
 4 as subpoenas in civil actions in the circuit courts are served and returned.

5 (b) The fees and mileage expenses as prescribed by law for witnesses
 6 in civil cases shall be paid by the Department of Correction.

7 (c)(1) In case of failure or refusal by any person to comply with a
 8 subpoena issued under this section to testify or answer to any matter
 9 regarding which the person may be lawfully interrogated, any circuit court in
 10 this state, on application of the hearing officer or the chair, shall, in
 11 term or vacation, issue an attachment for the person and compel him or her to
 12 comply with the subpoena and appear before the hearing officer or the board
 13 and to produce any testimony and documents as may be required.

14 (2) The circuit court shall have the power to punish any
 15 contempt, in case of disobedience, as in civil cases, or it shall be a
 16 misdemeanor for a witness to refuse or neglect to appear and testify,
 17 punishable upon conviction by a fine of not less than fifty dollars (\$50.00)
 18 nor more than five hundred dollars (\$500).

19 (d) Any person willfully testifying falsely under oath before the
 20 board or at a preliminary hearing in which probable cause for parole
 21 revocation is to be considered as to any matter material to a lawful inquiry
 22 by the board or hearing officer may be charged with perjury and upon
 23 conviction punished accordingly.

24
 25 16-93-708. Parole alternative – Home detention.

26 (a) As used in this section:

27 (1) "Approved electronic monitoring or supervising device" means
 28 any electronic device approved by the Board of Corrections ~~which~~ that meets
 29 the minimum Federal Communications Commission regulations and requirements,
 30 and ~~which~~ that is limited in capability to recording or transmitting
 31 information as to the criminal defendant's presence in the home-;

32 (2) "Permanently incapacitated" means an inmate who, as
 33 determined by a licensed physician:

34 (A) Has a medical condition that is not necessarily
 35 terminal but renders him or her permanently and irreversibly incapacitated;
 36 and

1 (B) Requires immediate and long-term care; and
2 (3) "Terminally ill" means an inmate who, as determined by a
3 licensed physician:

4 (A) Has an incurable condition caused by illness or
5 disease; and

6 (B) Will likely die within two (2) years due to the
7 illness or disease.

8 (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this
9 section, a defendant convicted of a felony or misdemeanor and sentenced to
10 imprisonment may be incarcerated in a home detention program when+ the
11 Director of the Department of Correction or the Director of the Department of
12 Community Correction shall communicate to the Parole Board when, in the
13 independent opinions of either a Department of Correction physician or
14 Department of Community Correction physician and a consultant physician in
15 Arkansas, an inmate is either terminally ill or permanently incapacitated and
16 should be considered for transfer to parole supervision.

17 ~~(i) In the independent opinions of a prison~~
18 ~~physician and a consultant physician from the community, a person who is~~
19 ~~incarcerated in the Department of Correction or Department of Community~~
20 ~~Correction has an incurable illness which on the average will result in death~~
21 ~~within twelve (12) months; or~~

22 ~~(ii) A person who is incarcerated in the Department~~
23 ~~of Correction or Department of Community Correction is permanently physically~~
24 ~~or mentally incapacitated to the degree that the community criteria are met~~
25 ~~for placement in a nursing home, rehabilitation facility, or setting~~
26 ~~providing a similar level of care.~~

27 (B) The Director of the Department of Correction or the
28 Director of the Department of Community Correction shall make the facts
29 described in subdivision (b)(1)(A) of this section known to the Parole Board
30 for consideration of early release to home detention.

31 (2) The Board of Corrections shall promulgate rules that will
32 establish policy and procedures for incarceration in a home detention
33 program.

34 (c)(1) In all instances where the ~~department~~ Department of Correction
35 may release any inmate to community supervision, in addition to all other
36 conditions ~~which~~ that may be imposed by the ~~department~~ Department of

1 Correction, the ~~department~~ Department of Correction may require the criminal
2 defendant to participate in a home detention program.

3 (2)(A) The term of the home detention shall not exceed the
4 maximum number of years of imprisonment or supervision to which the inmate
5 could be sentenced.

6 (B) The length of time the defendant participates in a
7 home detention program and any good-time credit awarded shall be credited
8 against the defendant's sentence.

9 (d) The Board of Corrections shall establish policy and procedures for
10 participation in a home detention program, including, but not limited to,
11 program criteria, terms, and conditions of release.

12
13 16-93-709. Sex offender may not reside with minors.

14 (a) Whenever an inmate in a facility of the Department of Correction
15 who has been found guilty of or has pleaded guilty or nolo contendere to any
16 sexual offense defined in § 5-14-101 et seq., or incest as defined by § 5-26-
17 202, and the sexual offense or incest was perpetrated against a minor,
18 becomes eligible for parole and makes application for release on parole, the
19 Parole Board shall prohibit, as a condition of granting the parole, the
20 parolee from residing upon parole in a residence with any minor, unless the
21 board makes a specific finding that the inmate poses no danger to the minors
22 residing in the residence.

23 (b) If the board, upon a hearing ~~pursuant to~~ under § 16-93-705, finds,
24 by a preponderance of the evidence, that the parolee has failed to comply
25 with this condition of parole, the parole may be revoked and the parolee
26 returned to the custody of the department.

27
28 16-93-710. Parole for inmates who have served their term of
29 imprisonment in a county jail prior to being processed into the Department of
30 Correction.

31 (a)(1) Subject to conditions set by the Parole Board, an offender
32 convicted of a felony and sentenced to a term of imprisonment of two (2)
33 years or less in the Department of Correction, and who has served his or her
34 term of imprisonment in a county jail prior to being processed into the
35 Department of Correction, may be paroled from the Department of Correction
36 county jail backup facility directly to the Department of Community

1 Correction under parole supervision, and upon eligibility determination,
2 processed for release by the board.

3 (2) Transfer release proceedings or a preliminary review under
4 this subchapter shall begin no later than six (6) months prior to a person's
5 transfer eligibility date, and the Parole Board shall authorize jacket review
6 procedures at all institutions holding parole-eligible inmates to prepare
7 parole applications to comply with this time frame.

8 (3) The jacket review will be conducted by staff either from the
9 Department of Community Correction or by Department of Correction.

10 (b) An offender who has been found guilty of or pleaded guilty or nolo
11 contendere to a violent offense as defined by § 5-4-501(c)(2) or a Class Y
12 felony offense shall be ineligible under this section.

13 (c) As determined by the county sheriff, an offender who has committed
14 violent or sexual acts while incarcerated in a county jail facility shall be
15 ineligible to participate in the program established by this section.

16
17 16-93-711. Parole alternatives - Electronic monitoring of parolees.

18 (a) As used in this section, "approved electronic monitoring or
19 supervising device" means a device described in § 16-93-708(a).

20 (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this
21 section, an inmate serving a sentence in the Department of Correction may be
22 released from incarceration if the:

23 (i) Sentence was not the result of a jury or bench
24 verdict;

25 (ii) Inmate has served one hundred twenty (120) days
26 of his or her sentence;

27 (iii) Inmate has an approved parole plan;

28 (iv) Inmate was sentenced from a cell in the
29 sentencing guidelines that does not include incarceration in the presumptive
30 range;

31 (v) Conviction is for a Class C or Class D felony;

32 (vi) Conviction is not for a crime of violence,
33 regardless of felony level;

34 (vii) Conviction is not a sex offense, regardless of
35 felony level;

36 (viii) Conviction is not for manufacturing

1 methamphetamine, § 5-64-423(a) or the former § 5-64-401;

2 (ix) Conviction is not for possession of drug
 3 paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, if
 4 the conviction is a Class C felony or higher;

5 (x) Conviction is not a crime involving the threat
 6 of violence or bodily harm; and

7 (xi) Conviction is not for a crime that resulted in
 8 a death.

9 (B) The Director of the Department of Correction or the
 10 Director of the Department of Community Correction shall make the facts
 11 described in subdivision (b)(1)(A) of this section known to the Parole Board
 12 for consideration of electronic monitoring.

13 (2) The Board of Corrections shall promulgate rules that will
 14 establish policy and procedures for an electronic monitoring program.

15 (c)(1) An inmate released from incarceration on parole under this
 16 section shall be supervised by the Department of Community Correction using
 17 electronic monitoring until the inmate's transfer eligibility date or for at
 18 least ninety (90) days of full compliance by the inmate, whichever is sooner.

19 (2)(A) The term of electronic monitoring shall not exceed the
 20 maximum number of years of imprisonment or supervision to which the inmate
 21 could be sentenced.

22 (B) The length of time the defendant participates in an
 23 electronic monitoring program and any good-time credit awarded shall be
 24 credited against the defendant's sentence.

25
 26 16-93-712. Parole supervision.

27 (a)(1) The Parole Board shall establish written policies and
 28 procedures governing the supervision of parolees designed to enhance public
 29 safety and to assist the parolees in reintegrating into society.

30 (2)(A) The supervision of parolees shall be based on evidence-
 31 based practices including a validated risk-needs assessment.

32 (B) Decisions shall target the parolee's criminal risk
 33 factors with appropriate supervision and treatment designed to reduce the
 34 likelihood of reoffense.

35 (b) A parole officer shall:

36 (1) Investigate each case referred to him or her by the director

1 of the Parole Board, the Department of Community Correction, or the
2 prosecuting attorney;

3 (2) Furnish to each parolee under his or her supervision a
4 written statement of the conditions of parole and instruct the parolee that
5 he or she must stay in compliance with the conditions of parole or risk
6 revocation under § 16-93-705;

7 (3) Develop a case plan for each individual who is assessed as
8 being moderate to high risk to reoffend based on the risk and needs
9 assessment that targets the criminal risk factors identified in the
10 assessment, is responsive to individual characteristics, and provides
11 supervision of offenders according to that case plan;

12 (4) Stay informed of the parolee's conduct and condition through
13 visitation, required reporting, or other methods and shall report to the
14 Parole Board that information upon request;

15 (5) Use practicable and suitable methods that are consistent
16 with evidence-based practices to aid and encourage a parolee to improve his
17 or her conduct and condition and to reduce the risk of recidivism;

18 (6)(A) Conduct a validated risk-needs assessment of the parolee,
19 including without limitation criminal risk factors and specific individual
20 needs.

21 (B) The actuarial assessment shall include an initial
22 screening and, if necessary, a comprehensive assessment;

23 (7) Make decisions with the assistance of the risk-needs
24 assessment that are consistent with evidence-based practices on the type of
25 supervision and services necessary to each parolee; and

26 (8) Receive annual training on evidence-based practices and
27 criminal risk factors, as well as instruction on how to target these factors
28 to reduce recidivism.

29 (c)(1) The Department of Community Correction shall allocate
30 resources, including the assignment of parole officers, to focus on moderate-
31 risk and high-risk offenders as determined by the validated risk-needs
32 assessment provided in subdivision (b)(6) of this section.

33 (2) The Department of Community Correction shall require each
34 public and private treatment and service provider that receives state funds
35 for the treatment of or service for parolees to use evidence-based programs
36 and practices.

1 (d)(1) The Department of Community Correction shall have the authority
2 to sanction a parolee administratively without engaging the revocation
3 process under § 16-93-705.

4 (2)(A) The Department of Community Correction shall develop an
5 intermediate sanctions procedure and grid to guide a parole officer in
6 determining the appropriate response to a violation of conditions of
7 supervision.

8 (B) Intermediate sanctions administered by the Department
9 of Community Correction are required to conform to the sanctioning grid.

10 (3) Intermediate sanctions shall include without limitation:

11 (A) Day reporting;

12 (B) Community service;

13 (C) Increased substance abuse screening or treatment or
14 both;

15 (D) Increased monitoring, including electronic monitoring
16 and home confinement; and

17 (E)(i) Incarceration in a county jail for no more than
18 seven (7) days.

19 (ii) Incarceration as an intermediate sanction shall
20 not be used more than ten (10) times with an individual parolee, and no
21 parolee shall accumulate more than thirty (30) days incarceration as an
22 intermediate sanction before the parole officer files for revocation under §
23 16-93-706.

24
25 SECTION 105. Arkansas Code Title 16, Chapter 93, Subchapter 10 is
26 repealed.

27 ~~Subchapter 10~~

28 ~~—Community Service Work—Acts 1989, No. 957~~

29 ~~16-93-1001. Purpose.~~

30 ~~(a) The congested prison system has resulted in a number of changes~~
31 ~~within the criminal justice system that do not appear readily to the public~~
32 ~~eye. One major problem is that we have lost an interim sentencing alternative~~
33 ~~between placing a person on probation or a suspended sentence or sending that~~
34 ~~person to the prison system. This gap was filled in the past by incarcerating~~
35 ~~a person who received a felony suspended sentence which included, as a~~
36 ~~condition of the sentence, a period of incarceration in a local detention~~

1 ~~facility or incarcerating a person who received a misdemeanor sentence of up~~
 2 ~~to one (1) year in such a facility. As the prison system backlog inundated~~
 3 ~~county detention facilities, those spaces were no longer available for these~~
 4 ~~types of sentences. A result of the insufficient bedspace in county detention~~
 5 ~~facilities has been that more people are actually being sent to the prison~~
 6 ~~system in cases where incarceration in county detention facilities is a~~
 7 ~~viable alternative punishment.~~

8 ~~(b) This subchapter will help bridge the gap that has been created.~~
 9 ~~There are incentives for all facets of society. First, although the person~~
 10 ~~sentenced will be incarcerated, he or she does have an opportunity to “work”~~
 11 ~~his or her way out of being housed in the prison system. Also, the good time~~
 12 ~~incentive allows the prisoner to reduce his or her period of incarceration,~~
 13 ~~not only benefiting him or her, but also making it conducive for sheriffs to~~
 14 ~~implement work projects and free up their jail space for more violent~~
 15 ~~offenders. Budgetary cutbacks over the past five (5) years, for example, in~~
 16 ~~revenue sharing funds from the federal government, have resulted in many~~
 17 ~~community projects being neglected. An easy example is the clean up of our~~
 18 ~~cities, towns, and highways of litter and debris. From the public’s~~
 19 ~~standpoint, this subchapter would most importantly provide a mechanism for~~
 20 ~~providing these valuable services to the public at a minimal cost. It is~~
 21 ~~believed that the public will approve of the use of manual labor by persons~~
 22 ~~as a just punishment.~~

23
 24 ~~16-93-1002. Definitions.~~

25 ~~As used in this subchapter:~~

26 ~~(1) “Community work project” means any program in which county jail~~
 27 ~~inmates are allowed to work under the supervision of governmental agencies on~~
 28 ~~projects on public lands, buildings, roads, parks, and public rights-of-way~~
 29 ~~designed to benefit the governmental unit employing the inmates;~~

30 ~~(2) “Eligible offender” means any person convicted of a misdemeanor~~
 31 ~~offense or felony offense other than a capital felony offense, murder in the~~
 32 ~~first degree, murder in the second degree, rape, kidnapping, aggravated~~
 33 ~~robbery, driving while intoxicated, negligent homicide, or the delivery,~~
 34 ~~possession with intent to deliver, or manufacture of any controlled substance~~
 35 ~~in violation of the Uniform Controlled Substances Act, § 5-64-101 et. seq.;~~
 36 ~~and~~

1 ~~(3) “Work incentive credit” means that an inmate who voluntarily~~
 2 ~~agrees to be sentenced under the appropriate provisions of this subchapter,~~
 3 ~~and successfully performs such services, shall be entitled to receive up to~~
 4 ~~three (3) days credit as designated by the sentencing court toward completion~~
 5 ~~of the inmate’s sentence for each day of such service performed.~~

6
 7 ~~16-93-1003. Provisions supplemental.~~

8 ~~This subchapter is supplemental to other alternative sentencing laws~~
 9 ~~and nothing in this subchapter shall repeal any provision of any law~~
 10 ~~providing for alternative sentencing nor shall this subchapter repeal any act~~
 11 ~~passed during the 1989 Regular Session of the General Assembly relating to~~
 12 ~~alternative sentencing.~~

13
 14 ~~16-93-1004. Procedure—Medical and legal costs.~~

15 ~~(a) Any consenting eligible offender who is convicted of a felony or~~
 16 ~~misdemeanor or who enters a plea of guilty or nolo contendere to a felony or~~
 17 ~~misdemeanor may upon recommendation of the prosecuting attorney be sentenced~~
 18 ~~under this subchapter.~~

19 ~~(b) The sentencing court may suspend imposition of the offender’s~~
 20 ~~sentence for a period not to exceed the period of years that is the maximum~~
 21 ~~penalty for the offense for which convicted upon condition that the defendant~~
 22 ~~be incarcerated in a county detention facility to participate in a community~~
 23 ~~work project. In order for the defendant to participate in this program,~~
 24 ~~space must be available in the county detention facility as certified by the~~
 25 ~~county sheriff to the Department of Correction. The length of such community~~
 26 ~~work project service and incarceration shall not exceed eighteen (18) months~~
 27 ~~on a felony with work incentive credit or, in the case of a misdemeanor, the~~
 28 ~~maximum length of incarceration provided for the misdemeanor reduced by the~~
 29 ~~work incentive credit.~~

30 ~~(c) In the event that during an offender’s service under a community~~
 31 ~~work project sentence pursuant to this subchapter, the offender withdraws his~~
 32 ~~or her consent to participate in the project, the sentencing court shall have~~
 33 ~~the offender brought before the court within a reasonable time after~~
 34 ~~receiving such notice from either the sheriff of the county wherein the~~
 35 ~~inmate is incarcerated or the prosecuting attorney of that county and make~~
 36 ~~inquiries of the offender to determine whether or not consent to proceed~~

1 under the program is being withdrawn. In the event that the court finds that
2 the offender is withdrawing consent to participate in the community work
3 project, the court shall remand the offender to the department if the offense
4 was a felony or, in the case of a misdemeanor, to the sheriff of the county
5 wherein the offense was committed, to serve the remaining portion of the
6 offender's sentence. The offender shall be entitled to all good time and
7 parole eligibility considerations as provided for by law. Any portion of the
8 sentence which was suspended by the court at the time of the original
9 sentence shall not be affected by the court's removal of an offender from
10 participating in the community work project.

11 (d) In the event that the offender's conduct while participating in a
12 community work project is unsatisfactory, the court may upon petition filed
13 by the prosecuting attorney schedule a hearing to determine if the offender
14 should be allowed to continue to participate in the community work project.
15 This hearing shall follow the same format and accord the offender the same
16 safeguards as the revocation procedure as outlined in § 5-4-309. The burden
17 of proof necessary for revocation of a sentence under this subchapter shall
18 be a preponderance of the evidence that the offender's conduct has not been
19 satisfactory while participating in a community work project. If the court
20 determined that the offender's conduct has not been satisfactory, the court
21 shall remand the offender to the department if the offense was a felony or,
22 in the case of a misdemeanor, to the sheriff of the county wherein the
23 offense was committed, to serve all or a part of the remaining portion of the
24 offender's original sentence. The offender shall be entitled to all good time
25 and parole eligibility considerations as provided for by law.

26 (e) Nothing in this subchapter shall grant any offender the right to
27 be sentenced under these provisions as a matter of right.

28 (f) The state shall be responsible for the cost of medical treatment
29 of an eligible offender sentenced pursuant to the felony provisions of this
30 subchapter.

31 (1) That is the result of injuries sustained on the work site or
32 during transportation to and from the work site by a governmental agency; or

33 (2) That is the result of illness or injuries sustained by
34 persons committed to the county jail and who are assigned to a community work
35 project. However, the department may transfer any inmate committed to jail
36 pursuant to this subchapter to a medical or treatment facility it deems

1 appropriate for the treatment.

2 ~~(g) The state shall be responsible for any liability incurred as the~~
 3 ~~result of implementation and execution of this subchapter involving persons~~
 4 ~~sentenced as eligible offenders for felony offenses who, pursuant to this~~
 5 ~~subchapter, may be injured while on a community work project or while being~~
 6 ~~transported to or from a community work project by a governmental agency.~~

7 ~~(h) The state shall reimburse the counties for housing inmates~~
 8 ~~sentenced pursuant to the felony provisions of this subchapter at a rate to~~
 9 ~~be determined by the Board of Corrections.~~

10
 11 SECTION 106. Arkansas Code Title 16, Chapter 93, Subchapter 11 is
 12 repealed.

13 ~~Subchapter 11~~

14 ~~—Community Service Work—Acts 1989, No. 613~~

15
 16 ~~16-93-1101. Definitions.~~

17 ~~As used in this subchapter:~~

18 ~~(1) “Community work project” means any program in which county jail~~
 19 ~~inmates are allowed to work under the supervision of governmental agencies on~~
 20 ~~projects on public lands, buildings, roads, parks, and public rights-of-way~~
 21 ~~designed to benefit the governmental unit utilizing the inmates;~~

22 ~~(2) “Eligible offender” means any person convicted of a misdemeanor~~
 23 ~~offense or felony offense other than a capital felony offense, murder in the~~
 24 ~~first degree, murder in the second degree, rape, kidnapping, aggravated~~
 25 ~~robbery, second or subsequent driving while intoxicated offenses, negligent~~
 26 ~~homicide, or the delivery, possession with intent to deliver, or manufacture~~
 27 ~~of any controlled substance in violation of the Arkansas Drug Abuse Control~~
 28 ~~Act, § 20-64-301 et seq.; and~~

29 ~~(3) “Work incentive credit” means that an inmate who voluntarily~~
 30 ~~agrees to be sentenced under the appropriate provisions of this subchapter,~~
 31 ~~and successfully performs such services, shall be entitled to receive one (1)~~
 32 ~~day credit as designated by the sentencing court toward completion of the~~
 33 ~~inmate’s sentence for each day of such service performed.~~

34
 35 ~~16-93-1102. Procedure generally.~~

36 ~~(a) Any consenting eligible offender who is convicted of a felony or~~

1 ~~misdemeanor, or who enters a plea of guilty or nolo contendere to a felony or~~
2 ~~misdemeanor, may upon recommendation of the court be sentenced under this~~
3 ~~subchapter.~~

4 ~~(b) The sentencing court may suspend imposition of the offender's~~
5 ~~sentence for a period not to exceed the period of years that is the maximum~~
6 ~~penalty for the offense convicted upon condition that the defendant be either~~
7 ~~incarcerated in a county detention facility or, at the discretion of the~~
8 ~~court, reside at his or her principal residence under the supervision of a~~
9 ~~probation officer and participate in a community work project. The length of~~
10 ~~such community work project service and incarceration shall not exceed~~
11 ~~eighteen (18) months on a felony with work incentive credit or, in the case~~
12 ~~of a misdemeanor, the maximum length of incarceration provided for the~~
13 ~~misdemeanor reduced by the work incentive credit.~~

14 ~~(c) In the event that during an offender's service under a community~~
15 ~~work project sentence pursuant to this subchapter, the offender withdraws his~~
16 ~~consent to participate in the project, the sentencing court shall have the~~
17 ~~offender brought before the court within a reasonable time after receiving~~
18 ~~such notice from either the sheriff of the county wherein the inmate is~~
19 ~~incarcerated or under probation, or the prosecuting attorney of that county,~~
20 ~~and the court shall make inquiries of the offender to determine whether or~~
21 ~~not consent to proceed under the program is being withdrawn. In the event~~
22 ~~that the court finds that the offender is withdrawing consent to participate~~
23 ~~in the community work project, the court shall remand the offender to the~~
24 ~~Department of Correction if the offense was a felony or, in the case of a~~
25 ~~misdemeanor, to the sheriff of the county wherein the offense was committed,~~
26 ~~to serve the remaining portion of the offender's sentence. The offender~~
27 ~~shall be entitled to all good time and parole eligibility considerations as~~
28 ~~provided for by law. Any portion of the sentence which was suspended by the~~
29 ~~court at the time of the original sentence shall not be affected by the~~
30 ~~court's removal of an offender from participating in the community work~~
31 ~~project.~~

32 ~~(d) In the event that the offender's conduct while participating in a~~
33 ~~community work project is unsatisfactory, the court may upon petition filed~~
34 ~~by the prosecuting attorney schedule a hearing to determine if the offender~~
35 ~~should be allowed to continue to participate in the community work project.~~
36 ~~This hearing shall follow the same format and accord the offender the same~~

1 ~~safeguards as the revocation procedure as outlined in § 5-4-309. The burden~~
2 ~~of proof necessary for revocation of a sentence under this subchapter shall~~
3 ~~be a preponderance of the evidence that the offender's conduct has not been~~
4 ~~satisfactory while participating in a community work project. If the court~~
5 ~~determines that the offender's conduct has not been satisfactory, the court~~
6 ~~shall remand the offender to the department if the offense was a felony or,~~
7 ~~in the case of a misdemeanor, to the sheriff of the county wherein the~~
8 ~~offense was committed, to serve all or part of the remaining portion of the~~
9 ~~offender's original sentence. The offender shall be entitled to all good time~~
10 ~~and parole eligibility considerations as provided for by law.~~

11
12 ~~16-93-1103. Rules and regulations.~~

13 ~~The Board of Corrections shall promulgate necessary rules and~~
14 ~~regulations to be followed by governmental entities in the supervision of~~
15 ~~eligible offenders utilized under the provisions of this subchapter.~~

16
17 ~~16-93-1104. Immunity from liability.~~

18 ~~All governmental agencies and units utilizing eligible offenders in~~
19 ~~community work projects shall be immune from liability and suit for damages,~~
20 ~~and no tort action shall lie against any governmental agency or unit because~~
21 ~~of the acts of eligible offenders utilized under the provisions of this~~
22 ~~subchapter.~~

23
24 ~~16-93-1105. Sentence optional.~~

25 ~~Nothing in this subchapter shall grant any offender the right to be~~
26 ~~sentenced under these provisions as a matter of right.~~

27
28 SECTION 107. Arkansas Code § 16-93-1206 is repealed.

29 ~~16-93-1206. Sentencing alternatives.~~

30 ~~(a)(1) The trial court may require that either a presentence~~
31 ~~investigation be conducted by either the probation officer or presentence~~
32 ~~investigation officer assigned to the court or may require that the defense~~
33 ~~counsel of the person, the prosecuting authority, the probation officer, and~~
34 ~~other persons whom the trial court believes have knowledge or information~~
35 ~~relevant to the sentencing of the convicted person submit to the trial court~~
36 ~~the information in writing for the sentencing phase of the trial.~~

1 ~~(2) Either the presentence investigation or information gathered~~
 2 ~~by the above mentioned parties shall be forwarded, with the commitment, to be~~
 3 ~~retained in the offender's file.~~

4 ~~(b) Upon determination by the court that the offender is an eligible~~
 5 ~~offender and that placement in a community correction program is proper, the~~
 6 ~~court may utilize the following methods of placement:~~

7 ~~(1)(A) Suspend the imposition of the sentence or place the~~
 8 ~~offender on probation, pursuant to § 5-4-104, § 5-4-201 et seq., and §§ 5-4-~~
 9 ~~301—5-4-311.~~

10 ~~(B) This sentence may be accompanied by assignment to a~~
 11 ~~community correction program for a designated period of time commensurate~~
 12 ~~with the goals of the program assignment and the rules and regulations~~
 13 ~~established by the Board of Corrections for the operation of community~~
 14 ~~correction programs.~~

15 ~~(C) The trial court shall maintain jurisdiction over the~~
 16 ~~eligible offender sentenced in this manner with supervision outside the~~
 17 ~~confines of the specific programming provided by probation officers assigned~~
 18 ~~to the court;~~

19 ~~(2)(A) In the event a person sentenced under subdivision (b)(1)~~
 20 ~~of this section violates any terms or conditions of his or her sentence or~~
 21 ~~term of probation, revocation of the sentence or term of probation shall be~~
 22 ~~consistent with the procedures established by law for the revocation of~~
 23 ~~suspended imposition of sentence or probation.~~

24 ~~(B) Upon revocation, the court of jurisdiction shall~~
 25 ~~determine whether the offender shall remain under the jurisdiction of the~~
 26 ~~court and be assigned to a more restrictive community correction program,~~
 27 ~~facility, or institution for a period of time or committed to the Department~~
 28 ~~of Community Correction.~~

29 ~~(C) If committed to the Department of Correction, the~~
 30 ~~court shall specify if the commitment is for judicial transfer of the~~
 31 ~~offender to the Department of Community Correction or is a regular~~
 32 ~~commitment; and~~

33 ~~(3)(A) Commit the eligible offender to the custody of the~~
 34 ~~Department of Correction pursuant to this subchapter for judicial transfer to~~
 35 ~~the Department of Community Correction subject to the following:~~

36 ~~(i) That the sentence imposed provides that the~~

~~offender shall serve no more than two (2) years of confinement, with credit for meritorious good time, with initial placement in a Department of Community Correction facility; and~~

~~(ii) That the initial placement in the Department of Community Correction is conditioned upon the offender's continuing eligibility for Department of Community Correction placement and the offender's compliance with all applicable rules and regulations established by the board for community correction programs.~~

~~(B) Post-prison supervision shall accompany and follow programming when appropriate.~~

~~(c) No offender may be excluded from placement in a community correction program based solely on the offender's inability to speak, read, write, or hear or to understand English.~~

SECTION 108. Arkansas Code Title 16, Chapter 93, Subchapter 13 is repealed.

~~Subchapter 13—Criteria for Transfer to Community Punishment Programs 16-93-1301. Transfer provisions.~~

~~(a) As used in this subchapter, "felonies" means those crimes classified as Class Y, Class A, Class B, Class C, Class D, or unclassified felonies by the laws of this state.~~

~~(b)(1) Persons who committed felonies prior to January 1, 1994, and who were convicted and incarcerated for those felonies shall be eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed.~~

~~(2) Persons who committed target offenses under the Community Punishment Act, § 16-93-1201 et seq., prior to January 1, 1994, and who have not been sentenced to a term of incarceration may waive the right to be released under the parole eligibility law in effect at the time the crimes were committed and shall become eligible for judicial transfer pursuant to the transfer provisions provided in subdivision (c)(2) of this section.~~

~~(3) Persons who have committed felonies who are within a target group as currently defined under § 16-93-1202(10) and who are released on parole shall be eligible, pursuant to rules and regulations established by the Parole Board, for commitment to a community correction facility if they are found to be in violation of any of their parole conditions, unless the~~

1 ~~parole violation constitutes a nontarget felony offense.~~

2 ~~(c) Persons who commit felonies on or after January 1, 1994, and who~~
 3 ~~shall be convicted and incarcerated for those felonies shall be eligible for~~
 4 ~~transfer to community correction as follows:~~

5 ~~(1)(A) Inmates under sentence of death or life imprisonment~~
 6 ~~without parole shall not be eligible for transfer, but may be pardoned or~~
 7 ~~have their sentences commuted by the Governor as provided by law.~~

8 ~~(B) Inmates sentenced to life imprisonment shall not be~~
 9 ~~eligible for transfer unless the sentences are commuted to a term of years by~~
 10 ~~executive clemency.~~

11 ~~(C) Upon commutation, inmates shall be eligible for~~
 12 ~~transfer as provided in this subchapter;~~

13 ~~(2)(A)(i)(a) Offenders convicted of a target offense under the~~
 14 ~~Community Punishment Act, § 16-93-1201 et seq., may be committed to the~~
 15 ~~Department of Correction and judicially transferred to the Department of~~
 16 ~~Community Correction by specific provision in the commitment that the trial~~
 17 ~~court order such a transfer.~~

18 ~~(b) No other offenders are eligible for~~
 19 ~~transfer to a Department of Community Correction facility.~~

20 ~~(ii) A copy of the commitment shall be forwarded~~
 21 ~~immediately to the Department of Correction and to the Department of~~
 22 ~~Community Correction.~~

23 ~~(iii) In the event that an offender is sentenced to~~
 24 ~~the Department of Correction without judicial transfer on one (1) sentence~~
 25 ~~and concurrently sentenced to the Department of Correction with judicial~~
 26 ~~transfer on another sentence, the offender shall remain in the Department of~~
 27 ~~Correction, and the sentence with judicial transfer may be discharged in the~~
 28 ~~same manner as those offenders transferred back to the Department of~~
 29 ~~Correction.~~

30 ~~(B) The Department of Community Correction shall take over~~
 31 ~~supervision of the offender in accordance with the order of the court.~~

32 ~~(C) The Department of Community Correction shall provide~~
 33 ~~for the appropriate disposition of the offender as expeditiously as~~
 34 ~~practicable under rules and regulations developed by the Board of~~
 35 ~~Corrections.~~

36 ~~(D) The offender shall not be transported to the~~

1 Department of Correction on the initial placement in a Department of
2 Community Correction facility pursuant to a judicial transfer.

3 (E) An offender who is transferred back to the Department
4 of Correction for disciplinary reasons may be considered for transfer to
5 Department of Community Correction supervision after earning good time credit
6 equal to one half ($\frac{1}{2}$) of the remainder of his or her sentence.

7 (F) An offender who is sentenced after July 31, 2007, and
8 who is transferred back to the Department of Correction for administrative
9 reasons is eligible for transfer to Department of Community Correction
10 supervision in the same manner as an offender who is sentenced to the
11 Department of Correction without a judicial transfer to the Department of
12 Community Correction; and

13 (3)(A) All other classified or unclassified felons who are
14 incarcerated therefor shall be eligible for transfer to community punishment
15 after having served one third ($\frac{1}{3}$) or one half ($\frac{1}{2}$), with credit for
16 meritorious good time, of their sentences depending on the seriousness
17 determination made by the Arkansas Sentencing Commission, or one half ($\frac{1}{2}$),
18 with credit for meritorious good time, of the time to which their sentences
19 are commuted by executive clemency.

20 (B) For example, a six year sentence with optimal
21 meritorious good time credits will make the offender eligible for transfer in
22 one (1) year if he or she is required to serve one third ($\frac{1}{3}$) of his or her
23 sentence, or one and one half ($1\frac{1}{2}$) years if he or she is required to serve
24 one half ($\frac{1}{2}$) of his or her sentence.

25
26 16-93-1302. Transfer procedures.

27 (a)(1)(A) Inmates under sentence for all felonies except those listed
28 in subsection (b) of this section will be transferred from the Department of
29 Correction to the Department of Community Correction subject to rules and
30 regulations promulgated by the Board of Corrections and conditions set by the
31 Parole Board.

32 (B) This review may be conducted without a hearing when
33 the inmate has not received a major disciplinary report against him or her
34 which resulted in the loss of good time, there has not been a request by a
35 victim to have input on transfer conditions, and there is no indication in
36 the risk/needs assessment review that special conditions need to be placed on

1 ~~the inmate.~~

2 ~~(2)(A) When one (1) or more of the circumstances in subdivision~~
 3 ~~(a)(1) of this section are present, the Parole Board shall conduct a hearing~~
 4 ~~to determine the appropriateness of the inmate for transfer.~~

5 ~~(B) The Parole Board has two (2) options:~~

6 ~~(i) To transfer the individual to the Department of~~
 7 ~~Community Correction accompanied by conditions of the transfer, including,~~
 8 ~~but not limited to, supervision levels, programming requirements, and~~
 9 ~~facility placement when appropriate; or~~

10 ~~(ii) To deny transfer based on a set of established~~
 11 ~~criteria and to accompany the denial with a course of action to be undertaken~~
 12 ~~by the inmate to rectify the Parole Board concerns.~~

13 ~~(C) Upon completion of the course of action determined by~~
 14 ~~the Parole Board, after final review of the inmate's file to ensure~~
 15 ~~successful completion, the Parole Board shall authorize the inmate's transfer~~
 16 ~~to the Department of Community Correction in accordance with administrative~~
 17 ~~policies and procedures governing the transfer and subject to conditions~~
 18 ~~attached to the transfer.~~

19 ~~(3) Should an inmate fail to fulfill the course of action~~
 20 ~~outlined by the Parole Board to facilitate transfer to community correction,~~
 21 ~~it shall be the responsibility of the inmate to petition the Parole Board for~~
 22 ~~rehearing.~~

23 ~~(b)(1) Inmates under sentence for the following Class Y felonies shall~~
 24 ~~be eligible for discretionary transfer to the Department of Community~~
 25 ~~Correction by the Parole Board after having served the time required as set~~
 26 ~~by the Arkansas Sentencing Commission with credit for meritorious good time:~~

27 ~~(A) Murder in the first degree, § 5-10-102;~~

28 ~~(B) Kidnapping, § 5-11-102;~~

29 ~~(C) Rape, § 5-14-103;~~

30 ~~(D) Aggravated robbery, § 5-12-103;~~

31 ~~(E) Causing a catastrophe, § 5-38-202(a);~~

32 ~~(F) Engaging in a continuing criminal enterprise, § 5-64-~~
 33 ~~405; and~~

34 ~~(G) The manufacture or delivery of a schedule I or~~
 35 ~~schedule II controlled substance which by aggregate weight including~~
 36 ~~adulterants or diluents is greater than twenty-eight grams (28 g), § 5-64-~~

1 401(a)(1).

2 ~~(2)(A) Review of inmates convicted of the enumerated offenses in~~
3 ~~subdivision (b)(1) of this section shall be based upon policies and~~
4 ~~procedures adopted by the Parole Board for the review.~~

5 ~~(B) The policies and procedures shall include provision~~
6 ~~for notification of victims, that a hearing shall be held and records kept of~~
7 ~~such proceedings, and that there be a listing of the criteria upon which a~~
8 ~~denial may be based.~~

9 ~~(3) All transfers of offenders specified in this subsection~~
10 ~~shall be issued upon order, duly adopted, of the Parole Board in accord with~~
11 ~~such policies and procedures.~~

12 ~~(c)(1) The course of action required by the Parole Board shall not be~~
13 ~~outside the current resources of the Department of Correction nor the~~
14 ~~conditions set be outside the current resources of the Department of~~
15 ~~Community Correction.~~

16 ~~(2) However, the departments shall strive to accommodate the~~
17 ~~actions required by the Board of Corrections to the best of their ability.~~

18 ~~(d) Transfer is not an award of clemency and it shall not be~~
19 ~~considered as a reduction of sentence or a pardon.~~

20 ~~(e) Every inmate while on transfer status shall remain in the legal~~
21 ~~eustody of the Department of Correction, under the supervision of the~~
22 ~~Department of Community Correction, and subject to the orders of the Parole~~
23 ~~Board.~~

24 ~~(f) Inmates who are sentenced under the provisions of § 5-4-501(e) or~~
25 ~~(d) for serious violent felonies or felonies involving violence may be~~
26 ~~considered eligible for parole or for community correction transfer upon~~
27 ~~reaching regular parole or transfer eligibility, but only after reaching a~~
28 ~~minimum age of fifty five (55) years.~~

29
30 ~~16-93-1303. Computation of sentence.~~

31 ~~(a)(1) Time served shall be deemed to begin on the day sentence is~~
32 ~~imposed, not on the day a prisoner is received by the Department of~~
33 ~~Correction.~~

34 ~~(2) Time served shall continue only during the time in which an~~
35 ~~individual is actually confined in a county jail or other local place of~~
36 ~~lawful confinement or while under the custody and supervision of the~~

1 ~~Department of Correction.~~

2 ~~(3) Once sentenced to the Department of Correction, the~~
3 ~~department shall retain legal custody of the inmate for the duration of the~~
4 ~~original sentence.~~

5 ~~(b) The sentencing judge shall direct, when he or she imposes~~
6 ~~sentence, that time already served by the defendant in jail or other place of~~
7 ~~detention shall be credited against the sentence.~~

8
9 ~~16-93-1304. Revocation of transfer.~~

10 ~~(a) In the event an offender transferred under the provisions of this~~
11 ~~subchapter violates the terms or conditions of his transfer, a hearing shall~~
12 ~~follow all applicable legal requirements and shall be subject to any~~
13 ~~additional policies, rules, and regulations set by the Parole Board.~~

14 ~~(b)(1) In the event an offender transferred under the provisions of~~
15 ~~this subchapter is found to be or becomes ineligible for transfer into a~~
16 ~~Department of Community Correction facility, he or she shall be transported~~
17 ~~to the Department of Correction to serve the remainder of his sentence.~~

18 ~~(2) Notice of the ineligibility and the reasons therefor shall~~
19 ~~be provided to the offender, and a hearing may be requested before the board~~
20 ~~if the offender contests the factual basis of the ineligibility. Otherwise,~~
21 ~~the board may administratively approve the transfer to the Department of~~
22 ~~Correction.~~

23 ~~(c) An offender who is judicially transferred to a Department of~~
24 ~~Community Correction facility and subsequently transferred back to the~~
25 ~~Department of Correction by the board for disciplinary or administrative~~
26 ~~reasons may become eligible for any further transfer under § 16-93-~~
27 ~~1301(c)(2)(E) and (F).~~

28
29 SECTION 109. Arkansas Title 16, Chapter 93, Subchapter 15 is repealed.
30 Subchapter 15—Parole—Sentence Served in County Jail

31 ~~16-93-1501. Parole for inmates who have served their term of~~
32 ~~imprisonment in a county jail prior to being processed into the Department of~~
33 ~~Correction.~~

34 ~~Subject to conditions set by the Parole Board, all offenders convicted~~
35 ~~of a felony, and sentenced to a term of imprisonment of two (2) years or less~~
36 ~~in the Department of Correction, and who have served their term of~~

~~imprisonment in a county jail prior to being processed into the Department of Correction, may be paroled from the Department of Correction county jail backup facility directly to the Department of Community Correction under parole supervision, and upon eligibility determination, processed for release by the board.~~

~~16-93-1502. Program eligibility.~~

~~(a) Offenders who have been found guilty of or pleaded guilty or nolo contendere to a violent offense as defined by § 12-12-1103(11) [repealed] or a Class Y felony offense shall be ineligible to participate in the program established by this subchapter.~~

~~(b) As determined by the county sheriff, offenders who have committed violent or sexual acts while incarcerated in a county jail facility shall be ineligible to participate in the program established by this subchapter.~~

SECTION 110. Arkansas Code Title 16, Chapter 93 is amended to add a new subchapter to read as follows:

Subchapter 17 – Swift and Certain Accountability on Probation Pilot Program

16-93-1701. Establishment.

The Administrative Office of the Courts shall:

(1) Create the Swift and Certain Accountability on Probation Pilot Program, awarding up to five (5) grants in the program’s first year to counties or judicial districts requesting funds to establish probation programs to be administered by the Department of Community Correction designed to reduce recidivism by requiring swift, certain, and graduated sanctions for probationers in noncompliance;

(2) Possess the discretion to determine the appropriate number of grants based on the amount of money allocated for the grant program and the capacity of the applicants based on submitted proposals to successfully implement and evaluate the program;

(3) Ensure that grants awarded under this subchapter are awarded in a manner that promotes the strongest proposals and evaluation designs, that have the broadest impact and that are evenly geographically distributed; and

(4) Employ a person who shall have as one-half (1/2) of his or

1 her designated job duties the management of the program established under
 2 this subchapter.

3
 4 16-93-1702. Application.

5 (a) A county or judicial district may apply for a grant award under
 6 this subchapter by submitting a written application to the Administrative
 7 Office of the Courts.

8 (b) The application shall include the following:

9 (1) A description of the proposed probation program and the need
 10 in the county or judicial district for the establishment of a probation
 11 program under this subchapter;

12 (2) A description of the long-term strategy and a detailed plan
 13 of implementation, including how the county or judicial district intends to
 14 pay for the probation program after the grant funding is exhausted;

15 (3) A certification that all government or private entities
 16 that would be affected by the proposed probation program have been
 17 appropriately consulted regarding the development of the probation program;

18 (4) A description of the coordination plan involving all
 19 government or private entities in the implementation process;

20 (5) Identification of the governmental and judicial partners in
 21 the proposed probation program, including the chief judge of the circuit
 22 court as well as other participating judges in the applicable jurisdiction,
 23 the court administrator, the probation administrator, the county sheriff, the
 24 prosecuting attorney, the public defender, applicable private defense
 25 attorneys, applicable municipal law enforcement administrators, and
 26 applicable treatment provider administrators; and

27 (6) A description of how and assurances that the applicant will
 28 collect key process measures, including the:

29 (A) Number of probationers enrolled in the program;

30 (B) Frequency of drug testing probationers;

31 (C) Positive drug test rate and other rates of non-
 32 compliance with the measurable conditions of supervision;

33 (D) Kinds of sanctions available for a violation of
 34 probation;

35 (E) Kinds of rewards available for positive behavior;

36 (F) Certainty of the application of an appropriate

1 sanction;

2 (G) Average period of time from detection of a violation
3 to issuance of a sanction for the violation;

4 (H) Severity of the sanction; and

5 (I) Time between the completion of the sanction and a
6 subsequent violation, if any.

7
8 16-93-1703. Grant uses.

9 (a) A grant awarded under this subchapter shall be used by the grantee
10 to establish probation programs that:

11 (1) Identify probationers for enrollment in the program,
12 through, among other tools, a validated risk-needs assessment tool, who are:

13 (A) Serving a term of probation;

14 (B) At high risk of failing to observe the conditions of
15 supervision; and

16 (C) At high risk of being returned to incarceration as a
17 result of that failure;

18 (2) Notify probationers of the rules of the probation program,
19 and consequences for violating those rules;

20 (3) Monitor probationers for illicit drug use with regular and
21 rapid-result drug screening;

22 (4) Monitor probationers for violations of other rules and
23 probation terms, including failure to pay court-ordered financial obligations
24 such as child support or victim restitution;

25 (5) Respond to violations of those rules with immediate arrest
26 of the violating probationer and swift and certain modification of the
27 conditions of probation, including imposition of short jail stays;

28 (6) Immediately respond to probationers who have absconded from
29 supervision with service of bench warrants and immediate sanctions;

30 (7)(A) Provide rewards to probationers who comply with those
31 rules.

32 (B) Rewards shall include without limitation:

33 (i) Reduced reporting requirements;

34 (ii) Less frequent drug testing;

35 (iii) Certificates of achievement;

36 (iv) Other rewards as determined by the locality;

1 and

2 (v) Early termination of the sentence;

3 (8) Ensure funding for and referral to substance abuse treatment
4 for probationers who repeatedly fail to refrain from illicit drug use;

5 (9) Establish procedures to terminate program participation by,
6 and initiate revocation to a term of incarceration for probationers who
7 habitually fail to abide by program rules and pose a threat to public safety;
8 and

9 (10) Include regular coordination meetings for key partners of
10 the program, including the partners identified under § 16-93-1702(b)(5).

11 (b) As used in this section, "validated risk-needs assessment" means a
12 determination of a person's risk to reoffend and the needs that, when
13 addressed, reduce the risk to reoffend through the use of an actuarial
14 assessment tool that assesses the dynamic and static factors that drive
15 criminal behavior.

16

17 16-93-1704. Determination of program savings.

18 (a) Each county or judicial district receiving a grant under this
19 subchapter shall:

20 (1) Not later than twelve (12) months after an initial grant
21 award under this section and annually thereafter through the end of the grant
22 period calculate the amount of cost savings and costs averted, if any,
23 resulting from the reduced incarceration achieved through the grant program;
24 and

25 (2) Report to the Administrative Office of the Courts:

26 (A) The amount calculated under subdivision (a)(1) of this
27 section; and

28 (B) The portion of the amount, if any, that will be
29 reinvested for expansion of the grant program.

30 (b) The Administrative Office of the Courts shall:

31 (1) Annually evaluate:

32 (A) The methods used by courts to calculate the cost
33 savings reported under subdivision (a)(1) of this section; and

34 (B) The use of the savings by the courts to reinvest for
35 expansion of the grant program; and

36 (2) Provide guidance, assistance, and recommendations to such

1 courts relating to the potential reinvestment of such savings for expansion
 2 of the grant program.

3 (c) The Administrative Office of the Courts shall select an entity to
 4 serve as the program initiative evaluation coordinator to:

5 (1) Analyze and provide feedback on the measures and outcomes
 6 the individual program initiative programs are required to collect and
 7 conduct, respectively, in accordance with § 16-93-1702(b)(6);

8 (2) Ensure consistent tracking of the progress of the
 9 demonstration programs carried out under this section, including such
 10 measures and outcomes; and

11 (3) Ensure that the aggregate data from all such programs is
 12 available to each of the programs and to the Administrative Office of the
 13 Courts.

14 (d) The Administrative Office of the Courts shall report annually to
 15 the General Assembly and the Governor the results of the program initiative
 16 carried out under this subchapter.

17
 18 SECTION 111. Arkansas Code § 16-98-301 is amended to read as follows:
 19 16-98-301. Short title and definitions.

20 (a) This subchapter shall be known as the "Arkansas Drug Court Act".

21 (b) As used in this subchapter:

22 (1) "Evidence-based practices" means practices proven through
 23 research to reduce recidivism;

24 (2) "Validated risk-needs assessment" means a determination of a
 25 person's risk to reoffend and the needs that, when addressed, reduce the risk
 26 to reoffend through the use of an actuarial assessment tool that assesses the
 27 dynamic and static factors that drive criminal behavior; and

28 (3) "Violent felony offense" means an offense that is punishable
 29 by a term of imprisonment exceeding one (1) year, and during the course of
 30 the offense:

31 (A)(i) The person carried, possessed, or used a firearm or
 32 other dangerous weapon; and

33 (ii) The use of deadly force was used against
 34 another person; or

35 (B) Death or serious physical injury was inflicted upon
 36 another person, regardless of whether death or serious physical injury was an

1 element of the crime for which the person was convicted.

2
3 SECTION 112. Arkansas Code § 16-98-302 is amended to read as follows:
4 16-98-302. Purpose and intent.

5 (a) There is a critical need for judicial intervention and support for
6 effective treatment programs that reduce the incidence of drug use, drug
7 addiction, and family separation due to parental substance abuse and drug-
8 related crimes. It is the intent of the General Assembly for this subchapter
9 to enhance public safety by facilitating the creation, expansion, and
10 coordination of drug court programs.

11 (b) The goals of the drug court programs in this state shall be
12 consistent with the standards adopted by the United States Department of
13 Justice and recommended by the National Association of Drug Court
14 Professionals and shall include the following key components:

15 (1) Integration of substance abuse treatment with justice system
16 case processing;

17 (2) Use of a nonadversarial approach in which prosecution and
18 defense promote public safety while protecting the right of the accused to
19 due process;

20 (3) Early identification, with the use of a validated risk-needs
21 assesement, of eligible moderate to high risk participants and prompt
22 placement of eligible participants;

23 (4) Access to a continuum of treatment, rehabilitation, and
24 related services;

25 (5) Frequent testing for alcohol and illicit drugs;

26 (6) A coordinated strategy among the judge, prosecution,
27 defense, and treatment providers to govern offender compliance;

28 (7) Ongoing judicial interaction with each participant;

29 (8) Monitoring and evaluation of the achievement of program
30 goals and effectiveness;

31 (9) Continuing interdisciplinary education to promote effective
32 planning, implementation, and operation; and

33 (10) Development of partnerships with public agencies and
34 community-based organizations to generate local support and enhance drug
35 court effectiveness.

36 (c)(1) Drug court programs are specialized court dockets within the

1 existing structure of the Arkansas court system. Drug court programs offer
2 judicial monitoring of intensive treatment and strict supervision of addicts
3 in drug and drug-related cases.

4 (2) The creation of a drug court docket and the appointment of a
5 circuit judge to that docket shall be approved by the administrative judge in
6 each judicial circuit and made a part of the judicial circuit's
7 administrative plan required by Supreme Court Administrative Order Number 14.

8 (d) Drug court program success shall be determined by the rate of
9 recidivism of all drug court participants, including participants who do not
10 graduate.

11
12 SECTION 113. Arkansas Code § 16-98-303(b)(2), regarding what services
13 the drug court program will incorporate from other state agencies, is amended
14 to read as follows:

15 (2) Subject to an appropriation, funding, and position authorization,
16 both programmatic and administrative, the Department of Community Correction
17 shall:

18 (A) Provide positions for persons to serve as probation
19 officers, drug counselors, and administrative assistants;

20 (B) Provide for drug testing for drug court program
21 participants;

22 (C) Provide for intensive outpatient treatment for drug court
23 program participants; ~~and~~

24 (D) Provide for intensive short-term and long-term residential
25 treatment for drug court program participants; and

26 (E) Develop clinical assessment capacity, including drug
27 testing, to identify participants with a substance addiction and develop a
28 treatment protocol that improves the person's likelihood of success.

29
30 SECTION 114. Arkansas Code § 16-98-303(b)(4), regarding what services
31 the Administrative Office of the Courts will provide to the drug court
32 program, is amended to read as follows:

33 (4) Subject to an appropriation, funding, and position authorization,
34 both programmatic and administrative, the Administrative Office of the Courts
35 shall:

36 (A) Provide state-level coordination and support for drug court

1 judges and their programs;

2 (B) Administer funds for the maintenance and operation of local
3 drug court programs;

4 (C) Provide training and education to drug court judges and
5 other professionals involved in drug court programs; ~~and~~

6 (D) Operate as a liaison between drug court judges and other
7 state-level agencies providing services to drug court programs; and

8 (E) Develop criteria for determining new drug court locations
9 that take into account:

10 (1) The current size of the defendant population that
11 meets the criteria for drug court participation;

12 (2) Recent trends indicating an increasing defendant
13 population that meets the criteria for drug court participation;

14 (3) Existing drug treatment programs currently in place
15 and operating through the courts, the county jail, or the Department of
16 Correction; and

17 (4) The drug court program's use of evidence-based
18 practices by key partners involved in the prospective drug court including
19 those to assess the needs of drug court participants in order to effectively
20 target programming toward high-risk participants.

21

22 SECTION 115. Arkansas Code § 16-98-303(c)(1), regarding who is not
23 eligible for drug court, is amended to read as follows:

24 (c)(1) A drug court program shall not be available to any defendant
25 who:

26 (A) Has a pending charge for a violent ~~criminal charge~~
27 felony against him or her; or

28 (B) Has been convicted of a violent felony offense as
29 defined in this subchapter or adjudicated delinquent as a juvenile of a
30 violent felony offense; or

31 (C)(i) Is required to register under the Sex Offender
32 Registration Act of 1997, § 12-12-901 et seq.

33 (ii) The exclusion under subdivision (c)(1)(C)(i) of
34 this section shall not apply to the offense of prostitution, § 5-70-102.

35

36 SECTION 116. Arkansas Code § 16-98-306(a), regarding the collection of

1 data for drug court programs, is amended to read as follows:

2 (a)(1) A drug court program shall collect and provide data on drug
 3 court applicants, ~~drug court participants, and the entire drug court program~~
 4 and all participants as required by the Division of Drug Court Programs
 5 within the Administrative Office of the Courts in accordance with the rules
 6 promulgated under § 16-98-307.

7 (2) The data shall include:

8 (A) The total number of applicants;

9 (B) The total number of participants;

10 (C) The total number of successful applicants;

11 (D) The total number of successful participants;

12 (E) The reason why each unsuccessful participant did not
 13 complete the program;

14 (F) Information about what happened to each unsuccessful
 15 participant;

16 (G) The total number of participants who were arrested for
 17 a new criminal offense while in the drug court program;

18 (H) The total number of participants who were convicted of
 19 a new criminal offense while in the drug court program;

20 (I) The total number of participants who committed a
 21 violation of one (1) or more conditions of the drug court program and the
 22 resulting sanction;

23 (J) The results of the initial risk-needs assessment
 24 review for each participant; and

25 (K) Any other data or information as required by the
 26 Division of Drug Court Programs within the Administrative Office of the
 27 Courts in accordance with the rules promulgated under § 16-98-307.

28
 29 SECTION 117. Arkansas Code Title 16 is amended to add a new chapter to
 30 read as follows:

31 Chapter 99 – Performance Incentive Funding For Recidivism and Crime
 32 Reduction

33 Subchapter 1 – Performance Incentive Act of 2011

34 16-99-101. Purpose and Intent.

35 (a) Both state and local agencies that implement criminal justice
 36 practices resulting in outcomes that reduce commitments to the Department of

1 Correction should be rewarded.

2 (b) If a state agency, county, or judicial district has implemented
3 proven risk-reduction strategies that reduce the number of offenders
4 returning to the Department of Correction with no resultant increase in the
5 crime rate; then, in order to reward the state agency, county, or judicial
6 district and as an incentive to encourage similar practices elsewhere, the
7 state agency, county, or judicial district should receive a monetary reward
8 to continue those practices.

9 (c) The award would represent a portion of the monetary savings from
10 the costs that would have been incurred had the state agency, county, or
11 judicial district not reduced its impact on the Department of Correction.

12 (d) The goal of this chapter is to align state and local fiscal
13 incentives by rewarding the Department of Community Correction, county
14 governments, and judicial districts for each entity's role in reducing its
15 impact on the Department of Correction.

16
17 16-99-102. Program authorized – Administration.

18 (a) Costs averted due to a reduction in commitments to the Department
19 of Correction or a reduction in the period of time served in the department,
20 to the extent possible, shall be reinvested into those state agencies,
21 counties, or judicial districts as an incentive to further the crime and
22 recidivism reduction strategies being employed.

23 (b) The Department of Community Correction shall be the recipient of
24 incentive funds upon meeting the requirements set out in this subchapter.

25 (c)(1) Counties, multicounty partnerships, and judicial districts
26 shall be eligible to apply for participation in the performance incentive
27 funding program set out in this subchapter on the reduction in the Department
28 of Correction's population.

29 (2) Participation in the program will be determined through a
30 competitive grant process.

31 (d) The Board of Corrections shall have the authority to manage the
32 program and administer the grant funds to appropriate applicants and the
33 Department of Community Correction.

34 (e)(1) Subject to the available funding, the Department of Community
35 Corrections shall manage and administer grant funds to itself and counties,
36 multi-county partnerships, and judicial districts in order to implement the

1 policies and programs authorized by this program.

2 (2) These shall be one-time only grants not contingent on
 3 measured performance.

4 (3) All future funding under this section shall be tied to
 5 measured performance.

6
 7 16-99-103. Application.

8 (a)(1) The Department of Community Correction shall receive additional
 9 funding for committing to a reduction in the number of probation revocations
 10 that result from a technical violation or a new crime.

11 (2) The baseline for comparing probation revocation data shall
 12 be based on the number of probation revocations and expected length of stay.

13 (3) In order to qualify for the additional monetary incentives
 14 under this subchapter, the felony conviction rate for probationers must
 15 remain stable or decrease from the previous year.

16 (4) Each year the Department of Community Correction shall
 17 receive additional funds for reducing the net impact of revocations on the
 18 Department of Correction.

19 (5) The Department of Community Correction shall promulgate
 20 rules and regulations for the distribution and use of incentive funds that it
 21 receives, requiring that:

22 (A) No less than one-third (1/3) of the funds received
 23 each year are distributed to the individual probation or parole areas
 24 responsible for the revocation reductions while maintaining or improving
 25 public safety; and

26 (B) All of the funds received by the Department of
 27 Community Correction are invested in programs and practices designed to
 28 reduce recidivism.

29 (b)(1) A competitive grant process will distribute grants to five (5)
 30 individual counties, multicounty partnerships, or judicial districts that
 31 meet criteria established to improve public safety and reduce their net
 32 impact on the Department of Correction.

33 (2) The Board of Corrections shall have the authority to:

34 (A) Manage the competitive grant process;

35 (B) Determine appropriate criteria;

36 (C) Award grants; and

1 (D) Collect and evaluate the data from all grantee sites.

2 (3) Applications can come from:

3 (A) Individual counties;

4 (B) Multicounty partnerships; or

5 (C) Judicial districts.

6 (4) Four (4) of the five (5) grants shall be awarded to the
7 counties, multicounty partnerships, or judicial districts with the largest
8 number of annual Department of Correction commitments that meet the program
9 criteria and submit acceptable applications.

10 (5) One (1) grant shall be awarded to a county, multicounty
11 partnership, or judicial district representing a rural region of the state,
12 notwithstanding the number of Department of Correction commitments from the
13 applicant so long as the program criteria are met and the application is
14 acceptable.

15 (6) Each year, the grant recipient shall receive additional
16 funds equal to one half (1/2) of the averted costs for reducing the net
17 impact of its sentences on the Department of Correction.

18 (7) The baseline for comparing the net impact of sentences shall
19 be based on the number of admissions and expected length of stay.

20 (8) In order to qualify for the additional monetary incentives
21 under this subchapter, the net impact of the county's, and multicounty's,
22 judicial district's above-guidelines sentences, based on admissions and
23 expected length of stay, must remain stable or decrease from the previous
24 year.

25 (9) The Board of Corrections shall promulgate rules and
26 regulations for the distribution and use of incentive funds to successful
27 applicants.

28

29 16-99-104. Implementation.

30 The Board of Corrections shall:

31 (1) Establish rules and regulations for counties, multicounty
32 partnerships, or judicial districts to apply for funds under this subchapter;

33 (2) Calculate and determine the baseline for the Department of
34 Community Correction's revocation rate and for the Department of Correction's
35 commitments' length of stay for evaluation purposes; and

36 (3) Calculate the averted costs to determine the amount to

1 redirect to successful applicants who qualify for funds awarded under the
 2 performance incentive funding program.

3
 4 16-99-105. Reporting and data collection.

5 (a)(1) The Department of Community Correction shall provide data and
 6 information as requested by the Board of Corrections.

7 (2) That data and information shall include without limitation:

8 (A) The total number of probationers from each of the
 9 Department of Community Correction’s individual probation or parole areas for
 10 the current year and previous years, as available;

11 (B) The total number of probation revocations, including
 12 revocations that result from violations and from new crimes for the current
 13 year and previous years, as available;

14 (C) The total number of new felony convictions and the
 15 rate of new felony convictions from each of the department’s individual
 16 probation or parole areas for the current year and previous years, as
 17 available;

18 (D) The amount of grant funds distributed to each
 19 individual probation or parole areas; and

20 (E)(i) The evidence-based programs established or enhanced
 21 by the Department of Community Correction as part of its effort to reduce
 22 revocations and improve public safety; and

23 (ii) Any subsequent evidence-based programs that
 24 contribute to the outcomes of the performance incentive funding program under
 25 this subchapter.

26 (b) Each grantee shall provide data and information as requested by
 27 the Board of Corrections, including without limitation:

28 (1) The list of counties, if in a multicounty partnership,
 29 participating;

30 (2) The amount of grant funds distributed under this chapter to
 31 each county, multicounty partnership, or judicial district; and

32 (3) The programs established or enhanced as part of each
 33 applicant’s successful grant proposal and any subsequent evidence-based
 34 programs that contribute to the outcomes of the program under this chapter.

35 (c) The board shall report all data, findings, and recommendations
 36 annually for improvement to the:

- 1 (1) Governor;
- 2 (2) Chief Justice of the Supreme Court;
- 3 (3) Director of the Administrative Office of the Courts;
- 4 (4) Speaker of the House;
- 5 (5) President of the Senate;
- 6 (6) Chair of the House Judiciary Committee; and
- 7 (7) Chair of the Senate Judiciary Committee.

8 (d)(1) The board’s report shall include an analysis of the impact of
 9 the performance incentive funding program.

10 (2) This analysis shall include without limitation the effect,
 11 compared to baseline, on net Department of Correction bed usage by the
 12 Department of Community Correction and by all county grantees, as well as
 13 Department of Correction admissions and length-of-stay, moneys paid out,
 14 revocation rates and new crime conviction rates for the Department of
 15 Community Correction, and guidelines compliance for participating counties.

16 (3) The board shall provide analyses on an area-by-area basis
 17 for the Department of Community Correction performance incentive funding
 18 program and on a county-by-county, multicounty partnership, or judicial
 19 district basis for the local performance incentive funding program.

20 (e) The board shall conduct a study and make recommendations, as
 21 needed, to those persons or entities listed in subsection (b) of this
 22 section, three (3) years after the implementation of the program established
 23 under this chapter and every third year thereafter to determine whether to
 24 change the baseline year that determines revocation reduction benchmarks.

25
 26 SECTION 118. Arkansas Code § 16-118-108(a), regarding those items
 27 defined as drug paraphernalia, is amended to read as follows:

28 (a) As used in this subchapter, “drug paraphernalia” means those items
 29 as defined by §§ 5-64-101, 5-64-403(a)(4), 5-64-443, and 5-64-505.

30
 31 SECTION 119. Arkansas Code § 17-17-312(f)(28), regarding criminal
 32 background checks for auctioneers, is amended to read as follows:

33 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
 34 64-101 – ~~5-64-608~~ 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-
 35 64-419 – 5-64-442;

1 SECTION 120. Arkansas Code § 17-27-313(e)(28), regarding criminal
 2 background checks for counselors, is amended to read as follows:

3 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
 4 64-101 – ~~5-64-608~~ 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-
 5 64-419 – 5-64-442;

6
 7 SECTION 121. Arkansas Code § 17-87-312(e)(28), regarding criminal
 8 background checks for nurses, is amended to read as follows:

9 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
 10 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –
 11 5-64-442;

12
 13 SECTION 122. Arkansas Code § 17-97-312(f)(28), regarding criminal
 14 background checks for psychologists and psychological examiners, is amended
 15 to read as follows:

16 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
 17 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –
 18 5-64-442;

19
 20 SECTION 123. Arkansas Code § 17-103-307(f)(28), regarding criminal
 21 background checks for social workers, is amended to read as follows:

22 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
 23 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –
 24 5-64-442;

25
 26 SECTION 124. Arkansas Code Title 19, Chapter 5, Subchapter 11 is
 27 amended to add a new section to read as follows:

28 19-5-1139. Best Practices Fund.

29 (a) There is created on the books of the Treasurer of State, the
 30 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to
 31 be known as the “Best Practices Fund”.

32 (b) The Best Practices Fund may consist of the proceeds from the
 33 payment of parole or probation supervision fees under § 16-93-104(a).

34 (c)(1) Expenditures from the Best Practices Fund shall be used to
 35 establish and maintain programs and services that implement practices that
 36 are proven to reduce the risk of having repeat offenders or recidivism,

1 including programs that address treatment needs of offenders.

2 (2) Programs funded by the Best Practices Fund, whether provided
3 by the Department of Correction, another state agency, or contracted with a
4 private vendor, shall meet criteria promulgated in Department of Correction
5 rules that establish evidence-based practices.

6 (3)(A) The funds deposited into the Best Practices Fund
7 supplement and do not replace the state and local resources that are
8 currently directed toward offender rehabilitation programs through the
9 Department of Community Correction, the Department of Human Services, or any
10 other state agency.

11 (B) Any expenditure from the General Fund or the Community
12 Correction Revolving Fund shall not be reduced based on the availability of
13 funds in the Best Practices Fund.

14
15 SECTION 125. Arkansas Code § 20-13-1106(b)(28), regarding criminal
16 background checks for emergency medical personnel, is amended to read as
17 follows:

18 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
19 64-101 – 5-64-608, as prohibited in:

20 (A) The former § 5-64-401; and

21 (B) Sections 5-64-419 – 5-64-442;

22
23 SECTION 126. Arkansas Code § 21-15-102(f)(28), regarding criminal
24 background checks for public officers and employees who have direct contact
25 with children and the mentally ill, is amended to read as follows:

26 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
27 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –
28 5-64-442;

29
30 SECTION 127. Arkansas Code § 21-15-103(g)(28), regarding criminal
31 background checks for public officers and employees, is amended to read as
32 follows:

33 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-
34 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –
35 5-64-442;

SECTION 128. The introductory language of Arkansas Code § 27-23-112(b)(7), regarding disqualification and cancellation for commercial driver’s licenses, is amended to read as follows:

(7) If a driver operates a motor vehicle and is convicted of using the vehicle in the commission of a felony involving delivering, manufacturing, ~~distributing, or dispensing~~ or trafficking a controlled substance in violation of ~~§§ 5-64-419 – 5-64-442 or the former~~ § 5-64-401, the driver shall be disqualified as follows:

SECTION 129. Arkansas Code § 27-23-128 is amended to read as follows:
27-23-128. Deferment of sentence – Restrictions.

No circuit or district court judge may utilize ~~§ 5-4-311~~, § 5-4-321, § 16-90-115, ~~or §§ 16-93-301 – 16-93-303~~, § 16-93-314, or § 27-50-701 or any other program to defer imposition of sentence in instances in which the defendant holds a commercial driver license and is charged with violating any state or local traffic law other than a parking violation.