

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011  
4

*As Engrossed: S3/8/11*  
**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.  
7 Pritchard, Salmon, J. Taylor, Whitaker, D. Wyatt  
8 By: Representatives Moore, Williams, Tyler, Webb  
9

10 **For An Act To Be Entitled**

11 AN ACT TO BE KNOWN AS THE PUBLIC SAFETY IMPROVEMENT  
12 ACT; AND FOR OTHER PURPOSES.  
13  
14

15 **Subtitle**

16 TO IMPROVE PUBLIC SAFETY AND SLOW  
17 CORRECTIONS GROWTH.  
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 less than two  
 24 thousand five hundred dollars (\$2,500);

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.

36

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

2 5-37-305. Penalties.

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

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

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

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

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

25 (A) The amount of any one (1) instrument or transaction is  
26 ~~two thousand five hundred dollars (\$2,500)~~ twenty-five thousand dollars  
27 (\$25,000) or more; or

28 (B) More than one (1) instrument or transaction has been  
29 drawn within a ninety-day ~~period, and each period,~~ each instrument or  
30 transaction is in an amount less than ~~two thousand five hundred dollars~~  
31 ~~(\$2,500)~~ twenty-five thousand dollars (\$25,000), and the total amount of all  
32 such instruments or transactions is ~~two thousand five hundred dollars~~  
33 ~~(\$2,500)~~ twenty-five thousand dollars (\$25,000) or more.

34 (2) Making, uttering, or delivering one (1) or more instruments  
35 or transactions drawn on insufficient funds or drawn on nonexistent accounts  
36 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 ~~(e) 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 ~~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,~~

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

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

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

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

14 5-64-403. Controlled substances – Fraudulent practices.

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

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

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

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

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

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

34 (B) The proffer of a controlled substance creates a  
35 rebuttable presumption of knowingly agreeing, consenting, or offering to  
36 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, Chapter 64, Subchapter 4 is amended*  
8 *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 in 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 that is not methamphetamine or cocaine.

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 less than two grams (2g) of a Schedule I  
36 or Schedule II controlled substance that is not methamphetamine or cocaine;

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

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

7           (B) Eighty (80) or more but less than one hundred sixty  
8 (160) dosage units of hydromorphone hydrochloride; or

9           (C) Eighty (80) or more but less than one hundred sixty  
10 (160) dosage units of Lysergic Acid Diethylamide (LSD); or

11           (D) Eighty (80) or more but less than one hundred sixty  
12 (160) dosage units but not more than two hundred grams (200g) for any other  
13 Schedule I or II depressant or hallucinogenic drug; or

14           (E) Eighty (80) or more but less than one hundred sixty  
15 (160) dosage units but not more than two hundred grams (200g) for any other  
16 Schedule I or II stimulant drug; or

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

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

23           (B) One hundred twenty-eight milligrams (128mg) or more or  
24 one hundred sixty (160) dosage units or more but less than two hundred grams  
25 (200g) of hydromorphone hydrochloride; or

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

29           (D) One hundred sixty (160) dosage units or more  
30 regardless of weight but less than two hundred grams (200g) for any other  
31 Schedule I or Schedule II depressant or hallucinogenic drug; or

32           (E) One hundred sixty (160) dosage units or more  
33 regardless of weight but less than two hundred grams (200g) for any other  
34 Schedule I or Schedule II stimulant drug.

35           (c) It is a defense to a prosecution under this section that the  
36 person possessed less than the minimum listed amount of a Schedule I or

1 Schedule II controlled substance that is not methamphetamine or cocaine and  
2 that is listed in this section.

3  
4 SECTION 49. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
5 to add a new section to read as follows:

6 5-64-426. Delivery of a Schedule I or Schedule II controlled substance  
7 that is not methamphetamine or cocaine.

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

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

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

13 (1) Class C felony if the person delivered by aggregate weight,  
14 including an adulterant or diluent, less than two grams (2g) of a Schedule I  
15 or Schedule II controlled substance that is not methamphetamine or cocaine;

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

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

22 (B) Eighty (80) or more but less than one hundred sixty  
23 (160) dosage units of hydromorphone hydrochloride;

24 (C) Eighty (80) or more but less than one hundred sixty  
25 (160) dosage units of Lysergic Acid Diethylamide (LSD);

26 (D) Eighty (80) or more but less than one hundred sixty  
27 (160) dosage units but not more than two hundred grams (200g) for any other  
28 Schedule I or Schedule II depressant or hallucinogenic drug; or

29 (E) Eighty (80) or more but less than one hundred sixty  
30 (160) dosage units but not more than two hundred grams (200g) for any other  
31 Schedule I or Schedule II stimulant drug; or

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

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

1 subdivision (c)(3); or

2 (B) One hundred sixty (160) dosage units or more but less  
3 than two hundred grams (200g) of hydromorphone hydrochloride; or

4 (C) One hundred sixty (160) dosage units or more but less  
5 than two hundred grams (200g) of Lysergic Acid Diethylamide (LSD); or

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

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

12  
13 SECTION 50. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
14 to add a new section to read as follows:

15 5-64-427. Manufacture of a Schedule I or Schedule II controlled  
16 substance that is not methamphetamine or cocaine.

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

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

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

22 (1) Class C felony if the person manufactured by aggregate  
23 weight, including an adulterant or diluent less than two grams (2g) of a  
24 Schedule I or Schedule II controlled substance that is not methamphetamine or  
25 cocaine;

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

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

32 (B) Eighty (80) or more but less than one hundred sixty  
33 (160) dosage units of hydromorphone hydrochloride;

34 (C) Eighty (80) or more but less than one hundred sixty  
35 (160) dosage units of Lysergic Acid Diethylamide (LSD);

36 (D) Eighty (80) or more but less than one hundred sixty

1 (160) dosage units for any other Schedule I or Schedule II depressant or  
 2 hallucinogenic drug regardless of weight; or

3 (E) Eighty (80) or more but less than one hundred sixty  
 4 (160) dosage units for any other Schedule I or Schedule II stimulant drug  
 5 regardless of weight; or

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

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

11 (B) One hundred sixty (160) dosage units or more of  
 12 hydromorphone hydrochloride; or

13 (C) One hundred sixty (160) or more dosage units of  
 14 Lysergic Acid Diethylamide (LSD); or

15 (D) One hundred sixty (160) dosage units or more  
 16 regardless of weight for any other Schedule I or II depressant or  
 17 hallucinogenic drug; or

18 (E) One hundred sixty (160) dosage units or more  
 19 regardless of weight for any other Schedule I or II stimulant drug.

20  
 21 SECTION 51. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter  
 22 4 is amended to add a new section to read as follows:

23 5-64-428. Possession of a Schedule III controlled substance with the  
 24 purpose to deliver.

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

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

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

33 (3) The Schedule III controlled substance is separated and  
 34 packaged in a manner to facilitate delivery; or

35 (4) The person possesses a firearm that is in the immediate  
 36 physical control of the person at the time of the possession of the Schedule

1 III controlled substance; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (c) It is a defense to a prosecution under this section that the



1 person possessed less than the minimum listed amount of a Schedule III  
2 controlled substance that is listed in this section.

3  
4 SECTION 52. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
5 to add a new section to read as follows:

6 5-64-430. Delivery of a Schedule III controlled substance.

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

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

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

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

20  
21 SECTION 53. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
22 to add a new section to read as follows:

23 5-64-431. Manufacture of a Schedule III controlled substance.

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

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

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

33 (3) A person who manufactures two hundred grams (200g) or more  
34 by aggregate weight, including an adulterant or diluent, of a Schedule III  
35 controlled substance upon conviction is guilty of a Class A felony.

36

1 SECTION 54. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter  
2 4 is amended to add a new section to read as follows:

3 5-64-432. Possession of a Schedule IV or Schedule V controlled  
4 substance with the purpose to deliver.

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (A) Two hundred grams (200g) or more but less than four

1 hundred grams (400g) of a Schedule IV or Schedule V controlled substance that  
2 is not a controlled substance listed in this subdivision (b)(2);

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

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

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

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

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

16 (C) 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 stimulant drug.

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

22  
23 SECTION 55. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
24 to add a new section to read as follows:

25 5-64-434. Delivery of a Schedule IV or Schedule V controlled  
26 substance.

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

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

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

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

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

8           5-64-435. Manufacture of a Schedule IV or Schedule V controlled  
9 substance.

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

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

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

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

24  
25          SECTION 57. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter  
26 4 is amended to add a new section to read as follows:

27          5-64-436. Possession of a Schedule VI controlled substance with the  
28 purpose to deliver.

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

33                 (1) The person possesses the means to weigh and separate a  
34 Schedule VI controlled substance; or

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

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

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

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

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

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

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

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

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

21           (4) Class B felony if the person possessed twenty five pounds  
22 (25 lbs.) or more but less than one hundred pounds (100 lbs.) by aggregate  
23 weight, including an adulterant or diluent of a Schedule VI controlled  
24 substance; or

25           (5) Class A felony if the person possessed one hundred pounds  
26 (100 lbs.) or more but less than five hundred pounds (500 lbs.) by aggregate  
27 weight, including an adulterant or diluent of a Schedule VI controlled  
28 substance.

29  
30       SECTION 58. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
31 to add a new section to read as follows:

32       5-64-438. Delivery of a Schedule VI controlled substance.

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

35       (b)(1) A person who delivers fourteen grams (14g) or less by aggregate  
36 weight, including an adulterant or diluent, of a Schedule VI controlled

1 substance upon conviction is guilty of a Class A misdemeanor.

2 (2) A person who delivers more than fourteen grams (14g) but  
3 less than four ounces (4 oz.) by aggregate weight, including an adulterant or  
4 diluent, of a Schedule VI controlled substance upon conviction is guilty of a  
5 Class D felony.

6 (3) A person who delivers four ounces (4 oz.) or more but less  
7 than twenty-five pounds (25 lbs.) by aggregate weight, including an  
8 adulterant or diluent, of a Schedule VI controlled substance upon conviction  
9 is guilty of a Class C felony.

10 (4) A person who delivers twenty-five pounds (25 lbs.) or more  
11 but less than one hundred pounds (100 lbs.) by aggregate weight, including an  
12 adulterant or diluent, of a Schedule VI controlled substance upon conviction  
13 is guilty of a Class B felony.

14 (5) A person who delivers one hundred pounds (100 lbs.) or more  
15 but less than five hundred pounds (500 lbs.) by aggregate weight, including  
16 an adulterant or diluent, of a Schedule VI controlled substance upon  
17 conviction is guilty of a Class A felony.

18  
19 SECTION 59. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
20 to add a new section to read as follows:

21 5-64-439. Manufacture of a Schedule VI controlled substance.

22 (a) Except as provided by this chapter, it is unlawful for a person to  
23 manufacture a Schedule VI controlled substance.

24 (b)(1) A person who manufactures fourteen grams (14g) or less by  
25 aggregate weight, including an adulterant or diluent, of a Schedule VI  
26 controlled substance is guilty of a Class A misdemeanor.

27 (2) A person who manufactures more than fourteen grams (14g) but  
28 less than four ounces (4 oz.) by aggregate weight, including an adulterant or  
29 diluent, of a Schedule VI controlled substance is guilty of a Class D felony.

30 (3) A person who manufactures four ounces (4 oz.) or more but  
31 less than twenty-five pounds (25 lbs.) by aggregate weight, including an  
32 adulterant or diluent, of a Schedule VI controlled substance upon conviction  
33 is guilty of a Class C felony.

34 (4) A person who manufactures twenty-five pounds (25 lbs.) or  
35 more but less than one hundred pounds (100 lbs.) by aggregate weight,  
36 including an adulterant or diluent, of a Schedule VI controlled substance

1 upon conviction is guilty of a Class B felony.

2 (5) A person who manufactures one hundred pounds (100 lbs.) or  
3 more by aggregate weight, including an adulterant or diluent, upon conviction  
4 is guilty of a Class A felony.

5  
6 SECTION 60. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
7 to add a new section to read as follows:

8 5-64-440. Trafficking a controlled substance.

9 (a) Except as provided by this chapter, it is unlawful for a person to  
10 engage in trafficking a controlled substance.

11 (b) A person engages in trafficking a controlled substance if he or  
12 she possesses a controlled substance by aggregate weight, including an  
13 adulterant or diluent, in the following amounts:

14 (1) Methamphetamine or cocaine, two hundred grams (200g) or  
15 more;

16 (2) Schedule I or Schedule II controlled substance that is not  
17 methamphetamine or cocaine, two hundred grams (200g) or more;

18 (3) Schedule III controlled substance, four hundred grams (400g)  
19 or more;

20 (4) Schedule IV or Schedule V controlled substance, eight  
21 hundred grams (800g) or more; or

22 (5) A Schedule VI controlled substance, five hundred pounds (500  
23 lbs.) or more.

24 (c) Trafficking a controlled substance is a Class Y felony.

25  
26 SECTION 61. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
27 to add a new section to read as follows:

28 5-64-441. Possession of a counterfeit substance.

29 (a) It is unlawful for any person to possess a counterfeit substance  
30 unless the counterfeit substance was obtained:

31 (1) Directly from or pursuant to a valid prescription or an  
32 order of a practitioner while acting in the course of his or her professional  
33 practice; or

34 (2) As otherwise authorized by this chapter.

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

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

1 of a Class D felony;

2 (2) Any other controlled substance, first offense or second  
3 offense, upon conviction is guilty of a Class A misdemeanor; and

4 (3) Any other controlled substance, third or subsequent offense,  
5 upon conviction is guilty of a Class D felony.

6 (c) For purposes of subsection (b) of this section, an offense is  
7 considered a third or subsequent offense if, before his or her conviction for  
8 the offense, the person has been convicted two (2) or more times for an  
9 offense under subsection (b) of this section or under any equivalent penal  
10 statute of the United States or of any state.

11  
12 SECTION 62. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
13 to add a new section to read as follows:

14 5-64-442. Delivery or manufacture of a counterfeit substance.

15 (a) Except as authorized by this chapter, it is unlawful for any  
16 person to deliver or manufacture a counterfeit substance.

17 (b) Any person who violates this subsection with respect to:

18 (1) A counterfeit substance purporting to be a Schedule I or  
19 Schedule II controlled substance upon conviction is guilty of a Class C  
20 felony;

21 (2) A counterfeit substance purporting to be a Schedule III  
22 controlled substance upon conviction is guilty of a Class D felony; or

23 (3) A counterfeit substance purporting to be a Schedule IV-VI  
24 controlled substance or that is not classified as a scheduled controlled  
25 substance upon conviction is guilty of a Class A misdemeanor.

26  
27 SECTION 63. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
28 to add a new section to read as follows:

29 5-64-443. Drug paraphernalia.

30 (a) A person who possesses drug paraphernalia with the purpose to use  
31 the drug paraphernalia to inject, ingest, inhale, or otherwise introduce into  
32 the human body a controlled substance in violation of this chapter upon  
33 conviction is guilty of:

34 (1) A Class A misdemeanor; or

35 (2) A Class D felony if the controlled substance is  
36 methamphetamine or cocaine.



1 (b) A person who uses or possesses with the purpose to use drug  
2 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,  
3 compound, convert, produce, process, prepare, test, analyze, pack, repack,  
4 store, contain, or conceal a controlled substance that is methamphetamine or  
5 cocaine upon conviction is guilty of a Class B felony.

6 (c) A person who uses or possesses with the purpose to use drug  
7 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,  
8 compound, convert, produce, process, prepare, test, analyze, pack, repack,  
9 store, contain, or conceal a controlled substance a controlled substance that  
10 is not methamphetamine or cocaine upon conviction is guilty of a Class D  
11 felony.

12  
13 SECTION 64. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
14 to add a new section to read as follows:

15 5-64-444. Drug paraphernalia – Delivery to a minor.

16 (a) A person eighteen (18) years of age or older who violates § 5-64-  
17 443 by delivering drug paraphernalia in the course of and in furtherance of a  
18 felony violation of this chapter to a person under eighteen (18) years of age  
19 who is at least three (3) years younger than the person upon conviction is  
20 guilty of a Class B felony.

21 (b) Otherwise, a person eighteen (18) years of age or older who  
22 violates § 5-64-443 by delivering drug paraphernalia to a person under  
23 eighteen (18) years of age who is at least three (3) years younger than the  
24 person upon conviction is guilty of a Class A misdemeanor.

25  
26 SECTION 65. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
27 to add a new section to read as follows:

28 5-64-445. Advertisement of a counterfeit substance or drug  
29 paraphernalia.

30 A person who places in any newspaper, magazine, handbill, or other  
31 publication any advertisement knowing, or under circumstances in which a  
32 person reasonably should know, that the purpose of the advertisement, in  
33 whole or in part, is to promote the sale of a counterfeit substance or of an  
34 object designed or intended for use as drug paraphernalia upon conviction is  
35 guilty of a Class C felony.

36

1 SECTION 66. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
2 to add a new section to read as follows:

3 5-64-446. Civil or criminal liability.

4 (a) Civil or criminal liability shall not be imposed by this chapter  
5 on any practitioner who manufactures, distributes, or possesses a counterfeit  
6 substance for use by a practitioner in the course of professional practice or  
7 research or for use as a placebo by a practitioner in the course of  
8 professional practice or research.

9 (b)(1) A person who violates §§ 5-64-419 – 5-64-442 is liable for the  
10 cost of the cleanup of the site where the person:

11 (A) Manufactured a controlled substance; or

12 (B) Possessed drug paraphernalia or a chemical for the  
13 purpose of manufacturing a controlled substance.

14 (2) The person shall make restitution to the state or local  
15 agency responsible for the cleanup for the cost of the cleanup under § 5-4-  
16 205.

17  
18 SECTION 67. Arkansas Code § 5-64-505(a)(4), regarding certain items  
19 subject to forfeiture, is amended to read as follows:

20 (4) Any conveyance, including an aircraft, vehicle, or vessel, that is  
21 used, or intended for use, to transport, or in any manner to facilitate the  
22 transportation, for the purpose of sale or receipt of property described in  
23 ~~subdivision~~ subdivisions (a)(1) or (a)(2) of this section, however:

24 (A) No conveyance used by any person as a common carrier in the  
25 transaction of business as a common carrier is subject to forfeiture under  
26 this section unless it appears that the owner or other person in charge of  
27 the conveyance is a consenting party or privy to a violation of this chapter;

28 (B)(i) No conveyance is subject to forfeiture under this section  
29 by reason of any act or omission established by the owner of the conveyance  
30 to have been committed or omitted without his or her knowledge or consent.

31 (ii) Upon a showing described in subdivision (a)(4)(B)(i)  
32 of this section by the owner or interest holder, the conveyance may  
33 nevertheless be forfeited if the prosecuting attorney establishes that the  
34 owner or interest holder either knew or should reasonably have known that the  
35 conveyance would be used to transport or in any manner to facilitate the  
36 transportation, for the purpose of sale or receipt, of property described in

1 ~~subdivision~~ subdivisions (a)(1) or (a)(2) of this section;

2 (C) A conveyance is not subject to forfeiture for a violation of  
3 ~~§ 5-64-401(e)~~ §§ 5-64-419 and 5-64-441 ; and

4 (D) A forfeiture of a conveyance encumbered by a bona fide  
5 security interest is subject to the interest of the secured party if the  
6 secured party neither had knowledge of nor consented to the act or omission;

7  
8 SECTION 68. Arkansas Code § 5-64-505(a)(8), regarding certain items  
9 subject to forfeiture, is amended to read as follows:

10 (8) Real property may be forfeited under this chapter if it  
11 substantially assisted in, facilitated in any manner, or was used or intended  
12 for use in the commission of any act prohibited by this chapter, however:

13 (A) No real property is subject to forfeiture under this chapter  
14 by reason of any act or omission established by the owner of the real  
15 property by a preponderance of the evidence to have been committed or omitted  
16 without his or her knowledge or consent;

17 (B) Real property is not subject to forfeiture for a violation  
18 of ~~§ 5-64-401(e)~~ § 5-64-419, if the offense is a Class C felony or less, or §  
19 5-64-441;

20 (C) A forfeiture of real property encumbered by a mortgage or  
21 other lien is subject to the interest of the secured party if the secured  
22 party neither had knowledge of nor consented to the unlawful act or omission;

23 (D) Upon conviction, when the circuit court having jurisdiction  
24 over the real property seized finds upon a hearing by a preponderance of the  
25 evidence that grounds for a forfeiture exist under this section, the court  
26 shall enter an order consistent with subsection (h) of this section;

27 (E) When any court orders a forfeiture of real property ~~pursuant~~  
28 ~~to~~ under this chapter, the order shall be filed of record on the day issued  
29 and shall have prospective effect only;

30 (F) A forfeiture of real property ordered under a provision of  
31 this chapter does not affect the title of a bona fide purchaser who purchased  
32 the real property prior to the issuance of the order, and the order has no  
33 force or effect on the title of the bona fide purchaser; and

34 (G) Any lis pendens filed in connection with any action pending  
35 under a provision of this chapter that might result in the forfeiture of real  
36 property is operative only from the time filed and has no retroactive effect.

1  
2 SECTION 69. Arkansas Code § 5-64-1102 is amended to read as follows:  
3 5-64-1102. Possession with ~~intent~~ purpose to manufacture – Unlawful  
4 distribution.

5 (a)(1) It is unlawful for a person to possess ephedrine,  
6 pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or  
7 salts of optical isomers with ~~intent~~ purpose to manufacture methamphetamine.

8 (2) ~~Any A~~ person who violates a ~~provision of~~ subdivision (a)(1)  
9 of this section upon conviction is guilty of a:

10 (A) Class D felony if the quantity of substances listed in  
11 subdivision (a)(1) of this section is capable of producing ten grams (10g) or  
12 less of methamphetamine; or

13 (B) Class B felony if the quantity of substances listed in  
14 subdivision (a)(1) of this section is capable of producing more than ten  
15 grams (10g) of methamphetamine.

16 (b)(1) It is unlawful for a person to possess ephedrine,  
17 pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or  
18 salts of optical isomers in a quantity capable of producing twenty-eight  
19 grams (28g) or more of a Schedule I or Schedule II controlled substance that  
20 is a narcotic drug or methamphetamine with purpose to manufacture  
21 methamphetamine.

22 (2) A person who violates subdivision (b)(1) of this section  
23 upon conviction is guilty of a Class B felony.

24 ~~(b)(1)(c)(1)~~ (c)(1) It is unlawful for a person to sell, transfer,  
25 distribute, or dispense any product containing ephedrine, pseudoephedrine, or  
26 phenylpropanolamine, or their salts, isomers, or salts of isomers if the  
27 person:

28 (A) Knows that the purchaser will use the product as a  
29 precursor to manufacture methamphetamine or another controlled substance; or

30 (B) Sells, transfers, distributes, or dispenses the  
31 product with reckless disregard as to how the product will be used.

32 (2) ~~Any A~~ person who violates a ~~provision of~~ subdivision ~~(b)(1)~~  
33 ~~(c)(1)~~ of this section upon conviction is guilty of a Class D felony.

34  
35 SECTION 70. Arkansas Code § 5-74-106(a), regarding the crime of  
36 simultaneous possession of drugs and firearms, is amended to read as follows:

1 (a) ~~No person shall~~ A person shall not unlawfully commit a felony  
2 violation of ~~§ 5-64-401~~ § 5-64-419 – § 5-64-442 or unlawfully attempt,  
3 solicit, or conspire to commit a felony violation of ~~§ 5-64-401~~ § 5-64-419 –  
4 § 5-64-442 while in possession of:

5 (1) A firearm; or

6 (2) Any implement or weapon that may be used to inflict serious  
7 physical injury or death, and that under the circumstances serves no apparent  
8 lawful purpose.

9  
10 SECTION 71. Arkansas Code § 9-28-409(e)(1)(T), regarding criminal  
11 record and child maltreatment checks for the placement of children, is  
12 amended to read as follows:

13 (T) Engaging in conduct with respect to controlled substances as  
14 prohibited in the former § 5-64-401 and § 5-64-419 – § 5-64-442;

15  
16 SECTION 72. Arkansas Code § 12-12-1202 is amended to read as follows:  
17 12-12-1202. Information provided.

18 (a) A victim notification may be accomplished by means of the  
19 computerized victim notification system established under § 12-12-1201 if  
20 pursuant to:

21 (1) Section 12-29-114, pertaining to escape;

22 (2) Section 16-21-106, pertaining to assistance to victims and  
23 witnesses of crimes;

24 (3) Section 16-93-204, pertaining to executive clemency;

25 (4) Section ~~16-93-206~~ 16-93-615, pertaining to transfer  
26 hearings;

27 (5) Section 16-93-702, pertaining to parole; or

28 (6) Section 16-97-102, pertaining to sentencing.

29 (b) The computerized victim notification system established under §  
30 12-12-1201 shall also include information about an inmate's custody status in  
31 regard to furloughs, work release, and community correction programs.

32  
33 SECTION 73. Arkansas Code § 12-29-201(b), regarding meritorious good  
34 time, is amended to read as follows:

35 (b) An inmate transferred or paroled to the supervision of the  
36 Department of Community Correction under ~~§ 16-93-206~~ § 16-93-615 may receive

1 meritorious good time reducing his or her time of transfer or parole  
2 supervision up to thirty (30) days for each month he or she is under the  
3 supervision of the Department of Community Correction.  
4

5 SECTION 74. Arkansas Code § 12-29-202(e), regarding the awarding of  
6 meritorious good time, is amended to read as follows:

7 (e) ~~In no event shall the awarding of meritorious~~ Meritorious good  
8 time awarded under subdivision (d)(1) of this section shall not be applicable  
9 to persons sentenced under ~~§ 16-93-611(a)(1)(A)-(E)~~ § 16-93-618(a)(1)(A)-(E).  
10

11 SECTION 75. Arkansas Code § 12-29-404 is amended to read as follows:

12 12-29-404. ~~Incurable diseases~~ Medical parole for a terminal illness or  
13 permanent incapacitation.

14 ~~(a) When in the independent opinions of a prison physician and a~~  
15 ~~consultant physician from the community, an inmate has an incurable illness~~  
16 ~~which, on the average, will result in death within twelve (12) months, or~~  
17 ~~when an inmate is permanently physically or mentally incapacitated to the~~  
18 ~~degree that the community criteria are met for placement in a nursing home,~~  
19 ~~rehabilitation facility, or similar setting providing a level of care not~~  
20 ~~available in the Department of Correction or the Department of Community~~  
21 ~~Correction, the Director of the Department of Correction or the Director of~~  
22 ~~the Department of Community Correction shall make these facts known to the~~  
23 ~~Parole Board.~~

24 (a) As used in this section:

25 (1) "Permanently incapacitated" means, as determined by a  
26 licensed physician, that an inmate:

27 (A) Has a medical condition that is not necessarily  
28 terminal but renders him or her permanently and irreversibly incapacitated;  
29 and

30 (B) Requires immediate and long-term care; and

31 (2) "Terminally ill" means, as determined by a licensed  
32 physician, that an inmate:

33 (A) Has an incurable condition caused by illness or  
34 disease; and

35 (B) Will likely die within two (2) years due to the  
36 illness or disease.

1        (b) The Director of the Department of Correction or the Director of  
2 the Department of Community Correction shall communicate to the Parole Board  
3 when, in the independent opinions of either a Department of Correction  
4 physician or Department of Community Correction physician and a consultant  
5 physician in Arkansas, an inmate is either terminally ill or permanently  
6 incapacitated and should be considered for transfer to parole supervision.

7        ~~(b)(1)(c)(1)~~ The Upon receipt of a communication described in  
8 subsection (b) of this section, the board shall assemble or request all such  
9 information as is germane to ~~making a decision~~ determine whether the inmate  
10 is eligible under this section for immediate transfer to parole supervision.

11        (2) If the facts warrant, and the board is satisfied that the  
12 inmate's physical condition makes the inmate no longer a threat to public  
13 safety, the board may ~~make~~ approve the inmate ~~eligible~~ for immediate transfer  
14 to parole supervision.

15        (d) An inmate is not eligible for parole supervision under this  
16 section if he or she is required to register as a sex offender under the Sex  
17 Offender Registration Act of 1997, § 12-12-901 et seq., and:

18        (1) The inmate is assessed as a Level Three (3) offender or  
19 higher; or

20        (2) A victim of one (1) or more of the inmate's sex offenses was  
21 fourteen (14) years of age or younger.

22        (e) The board may revoke a person's parole supervision granted under  
23 this section if the person's medical condition improves to the point that he  
24 or she would initially not have been eligible for parole supervision under  
25 this section.

26  
27        SECTION 76. Arkansas Code § 16-90-120 is amended to read as follows:

28        16-90-120. Felony with firearm.

29        (a) Any person convicted of any offense ~~which~~ that is classified by  
30 the laws of this state as a felony who employed any firearm of any character  
31 as a means of committing or escaping from the felony, in the discretion of  
32 the sentencing court, may be subjected to an additional period of confinement  
33 in the state penitentiary for a period not to exceed fifteen (15) years.

34        (b) The period of confinement, if any, imposed ~~pursuant to~~ under this  
35 section shall be in addition to any fine or penalty provided by law as  
36 punishment for the felony itself. Any additional prison sentence imposed

1 under the provisions of this section, if any, shall run consecutively and not  
2 concurrently with any period of confinement imposed for conviction of the  
3 felony itself.

4 (c) A separate appeal may be taken to the Supreme Court from the  
5 imposition of the sentence, if any, provided for by this section, and any  
6 appeal shall be in the manner prescribed for appellate review of conviction  
7 of criminal offenses in general. However, the sole and only question to be  
8 decided upon the separate appeal shall be whether the evidence warrants a  
9 finding that the defendant actually employed a firearm in the commission of,  
10 or escape from commission of, the felony for which he or she stands  
11 convicted.

12 (d) Any reversal of a defendant's conviction for the commission of the  
13 felony shall automatically reverse the prison sentence which may be imposed  
14 under this section.

15 (e)(1) For an offense committed on or after July 2, 2007,  
16 notwithstanding any law allowing the award of meritorious good time or any  
17 other law to the contrary, except as provided in subdivision (e)(1)(B)(ii) of  
18 this section, any person who is sentenced under subsection (a) of this  
19 section is not eligible for parole or community correction transfer until the  
20 person serves:

21 (A) Seventy percent (70%) of the term of imprisonment to  
22 which the person is sentenced under subsection (a) of this section if the  
23 underlying felony was any of the following:

- 24 (i) Murder in the first degree, § 5-10-102;  
25 (ii) Kidnapping that is a Class Y felony, § 5-11-  
26 102;  
27 (iii) Aggravated robbery, § 5-12-103;  
28 (iv) Rape, § 5-14-103; ~~or~~  
29 (v) Causing a catastrophe, § 5-38-202(a);  
30 (vi) Trafficking methamphetamine, § 5-64-440(b)(1);  
31 (vii) Manufacturing methamphetamine, § 5-64-423(a)  
32 or the former § 5-64-401; or  
33 (viii) Possession of drug paraphernalia with the  
34 purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

35 (B)(i) Except as provided in subdivision (e)(1)(B)(ii) of  
36 this section, seventy percent (70%) of the term of imprisonment to which the



1 person is sentenced under subsection (a) of this section if the underlying  
2 felony was any of the following:

3 (a) ~~Manufacture of methamphetamine, § 5-64-~~  
4 ~~401(a)(1)~~ Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-  
5 401; or

6 (b) Possession of drug paraphernalia with the  
7 intent to manufacture methamphetamine, ~~§ 5-64-403(e)(5)~~ the former § 5-64-  
8 403(c)(5); or

9 (c) Trafficking methamphetamine, § 5-64-  
10 440(b)(1).

11 (ii) The person is eligible for parole or community  
12 correction transfer if the person serves at least fifty percent (50%) of the  
13 term of imprisonment to which the person is sentenced under subsection (a) of  
14 this section for the offenses listed in subdivision (e)(1)(B)(i) of this  
15 section with credit for the award of meritorious good time under § 12-29-201  
16 unless the person is sentenced to a term of life imprisonment. The time  
17 served by any person under this subdivision (e)(1)(B)(ii) shall not be  
18 reduced to less than fifty percent (50%) of the person's original sentence  
19 under subsection (a) of this section; or

20 (C) Either one-third (1/3) or one-half (1/2) of the term  
21 of imprisonment to which the person is sentenced under subsection (a) of this  
22 section with credit for meritorious good time and depending on the  
23 seriousness determination made by the Arkansas Sentencing Commission if the  
24 underlying felony was any felony not listed in subdivision (e)(1)(A) or (B)  
25 of this section.

26 (2) The sentencing court may waive subdivision (e)(1) of this  
27 section if all of the following circumstances exist:

28 (A) The defendant was a juvenile when the offense was  
29 committed;

30 (B) The defendant was merely an accomplice to the offense;  
31 and

32 (C) The offense was committed on or after July 31, 2007.

33 (f) A person who commits the offense of possession of drug  
34 paraphernalia with the intent to manufacture methamphetamine, § 5-64-443,  
35 after the effective date of this act shall not be subject to the provisions  
36 of this section.

1  
2 SECTION 77. Arkansas Code § 16-90-122(b), regarding post-conviction  
3 release of offenders, is amended to read as follows:

4 (b) A circuit judge shall not authorize the temporary release of an  
5 offender under subsection (a) of this section if the offender has been found  
6 guilty of or pleaded guilty or nolo contendere to a:

- 7 (1) Class Y felony offense listed in ~~§ 16-93-611~~ § 16-93-618; or  
8 (2) Felony sex offense listed in the definition of "sex offense"  
9 in § 12-12-903.

10  
11 SECTION 78. Arkansas Code § 16-90-802(d), regarding powers and duties  
12 of the Arkansas Sentencing Commission, is amended to read as follows:

13 (d) In furtherance of its purpose, the commission shall have the  
14 following powers and duties:

15 (1)(A) The commission shall adopt an initial sentencing  
16 standards grid and an offense seriousness reference table based upon the  
17 statutory parameters and additional data and information gathered prior to  
18 January 1, 1994.

19 (B) The commission shall also set the percentage of time  
20 within parameters set by law to be served for offenses at each seriousness  
21 level prior to any type of transfer or release;

22 (2)(A) The commission shall periodically review and may revise  
23 the voluntary sentencing standards.

24 (B) Any revision of the standards shall be in compliance  
25 with provisions applicable to rule making contained in the Arkansas  
26 Administrative Procedure Act, § 25-15-201 et seq.

27 (C) Any revision of the standards shall become effective  
28 as provided by the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

29 (D)(i) The revised standards will be in effect unless  
30 modified by the General Assembly at its next session or until revised again  
31 by the commission.

32 (ii) Any revisions by the commission shall be within  
33 the statutory parameters set for the various crime classes;

34 (3) The commission may review and make recommendations for  
35 revision of the Community Punishment Act, § 16-93-1201 et seq., target group  
36 to the General Assembly such that nonviolent offenses and offenders are

1 routinely handled in community punishment programs;

2 (4)(A) The commission shall be in charge of strategic planning  
3 for a balanced correctional plan for the state.

4 (B) The commission shall develop such a plan in  
5 conjunction with the Board of Corrections.

6 (C) The commission shall monitor compliance with  
7 sentencing standards, assess their impact on the correctional resources of  
8 the state with the assistance of the board and determine if the standards  
9 further the adopted sentencing policy goals of the state;

10 (5) The commission may review the classifications of crimes and  
11 sentences and make recommendations for change when supported by information  
12 that change is advisable to further the adopted sentencing policy goals of  
13 the state;

14 (6)(A) The commission shall develop a research and analysis  
15 system to determine the feasibility, impact on resources, and budget  
16 consequences of any proposed or existing legislation affecting sentence  
17 length.

18 (B) The commission shall prepare and submit to the General  
19 Assembly a report on any such legislation prior to its adoption;

20 (7)(A)(i) All courts having criminal jurisdiction of felony  
21 crimes shall provide to the commission in a timely manner all information  
22 deemed necessary by the commission.

23 (ii) Such information shall be in the form  
24 determined necessary by the commission.

25 (B) The commission shall have the authority to collect  
26 from any state or local governmental entity information, data in electronic  
27 or in other usable form, reports, statistics, or such other material which  
28 relates to sentencing laws, policies, and practices, or impacts on  
29 correctional resources or is necessary to carry out the commission's  
30 functions.

31 (C) The commission may coordinate its data collection with  
32 the Administrative Office of the Courts, the Arkansas Crime Information  
33 Center, the various circuit clerks of the state, and the various state and  
34 local correctional agencies;

35 (8) ~~Pursuant to~~ Under its duties outlined in this section, the  
36 commission shall be a criminal justice agency, as defined in § 12-12-1001(7),

1 as its powers and duties include:

2 (A) Determining transfer eligibility;

3 (B) Gathering, analyzing, and disseminating criminal  
4 history information as it relates to sentencing practices, dispositions, and  
5 release criteria; and

6 (C) Determining the appropriate use of correctional and  
7 rehabilitative resources of the state;

8 (9)(A) Produce annual reports regarding compliance with  
9 sentencing guidelines, including the application of voluntary presumptive  
10 standards, § 16-90-803, and departures from the standards, § 16-90-804.

11 (B) The report shall include:

12 (i) Data collected from each county; and

13 (ii) Both a county-by-county and statewide  
14 accounting of the results including without limitation:

15 (a) Sentences to the Department of Correction  
16 and Department of Community Correction;

17 (b) The average sentence length for sentences  
18 by offense type and severity level according to the sentencing guidelines;

19 (c) The percentage of sentences that are an  
20 upward departure from the sentencing guidelines; and

21 (d) The average number of months above the  
22 recommended sentence for those sentences described in subdivision

23 (d)(9)(B)(ii)(c).

24 (C) The report filed each year after the initial report  
25 submitted under this section shall include data from prior years;

26 (10) Prepare and conduct annual continuing legal education  
27 seminars regarding the sentencing guidelines to be presented to judges,  
28 prosecuting attorneys and their deputies, and public defenders and their  
29 deputies, as so required; and

30 (11)(A) The commission shall collaborate with the Administrative  
31 Office of the Courts to develop and implement an integrated sentencing  
32 commitment and departure form that shall include:

33 (1) Demographic information including the race and  
34 ethnicity of both the offender and the victim or victims;

35 (2) The placement decision;

36 (3) Sentence length;

1                   (4) Any departure from the sentencing guidelines on  
2 placement and sentence length;

3                   (5) The number of months above or below the  
4 presumptive sentence;

5                   (6) Justification for the departure; and

6                   (7) A signature space for the judge and the  
7 prosecuting attorney to sign off on the contents of the form.

8                   (B) The commission shall begin using the new form on  
9 January 1, 2012.

10                   (C)(1) Forms are to be collected annually and sent to the  
11 Administrative Office of the Courts.

12                   (2) Data from the forms shall be collected and  
13 submitted to the Chairs of the House Judiciary Committee and the Senate  
14 Judiciary Committee.

15  
16           SECTION 79. Arkansas Code § 16-90-802(g), regarding the staffing of  
17 the Arkansas Sentencing Commission, is amended to read as follows:

18           (g)(1) Subject to the approval of the chair, the executive director  
19 shall employ such other staff and shall contract for services as ~~is~~ are  
20 necessary to assist the commission in the performance of its duties, and as  
21 funds permit.

22                   (2) The executive director shall ensure that appropriate  
23 budgetary measures are taken to employ enough staff or contract for expert  
24 services and to purchase the technology needed to compile and process  
25 sentencing data from all judicial districts in a timely manner.

26  
27           SECTION 80. Arkansas Code § 16-90-901(a)(1), regarding definitions in  
28 the criminal expungement statute, is amended to read as follows:

29           (a)(1) As used in §§ 5-64-407, ~~5-4-311~~, 16-90-601, 16-90-602, 16-90-  
30 605, 16-93-301 – 16-93-303, 16-93-314, and 16-93-1207, “expunge” shall mean  
31 that the record or records in question shall be sealed, sequestered, and  
32 treated as confidential in accordance with the procedures established by this  
33 subchapter.

34  
35           SECTION 81. Arkansas Code § 16-90-1201(a), regarding criminal record  
36 expungement, is amended to read as follows:

1 (a) The record of a felony offense for possession of a controlled  
2 substance or counterfeit substance in violation of § 5-64-419, § 5-64-441, or  
3 the former § 5-64-401(c) shall be expunged ~~pursuant to~~ under this section.

4  
5 SECTION 82. Arkansas Code Title 16, Chapter 90 is amended to create a  
6 new subchapter to read as follows:

7 Subchapter 13 – Earned Discharge and Completion of Sentence

8 16-90-1301. Scope.

9 This subchapter shall apply to all applicable felony sentences entered  
10 on or after the effective date of the act.

11  
12 16-90-1302. Applicable felonies.

13 (a) The following felony offenses shall be eligible for earned  
14 discharge and completion of the sentence under this subchapter:

15 (1) All Class D, Class C, and Class B felonies, except:

16 (A) An offense for which sex offender registration is  
17 required under the Sex Offender Registration Act of 1997, § 12-12-901 et  
18 seq.;

19 (B) A felony involving violence under § 5-4-501(d)(2);

20 (C) Kidnapping, § 5-11-102;

21 (D) Manslaughter, § 5-10-104; or

22 (E) Driving while intoxicated, § 5-65-103; and

23 (2) All Class A felony controlled substance offenses, § 5-64-401  
24 et seq.

25 (b) A Class Y felony shall not be eligible for earned early discharge  
26 and completion of sentence under this subchapter.

27  
28 16-90-1303. Procedure.

29 (a) If a person is incarcerated for an eligible felony, whether by an  
30 immediate commitment or after his or her probation is revoked, and after he  
31 or she is moved to community supervision through parole or transfer by the  
32 Parole Board, or if he or she is placed on probation, he or she is  
33 immediately eligible to begin earning daily credits that shall count toward  
34 reducing the number of days he or she is otherwise required to serve until he  
35 or she has completed the sentence.

36 (b)(1) Credits equal to thirty (30) days per month for every month

1 that the offender complies with court-ordered conditions and a set of  
2 predetermined criteria established by the Department of Community Correction  
3 in consultation with judges, prosecuting attorneys, and defense counsel shall  
4 accrue while the person is on parole or probation.

5 (2) The department shall calculate the number of days the person  
6 has remaining to serve on parole or probation before that person completes  
7 his or her sentence.

8 (3) The number of days shall be recalculated on a monthly basis  
9 to reflect the application of any credits earned under this subchapter.

10 (c)(1)(A) The department shall have sole discretion to forfeit any  
11 credits a person earns under this subchapter unless otherwise provided for in  
12 this section.

13 (B) The award or forfeiture of any credits earned under  
14 this subchapter is not subject to appeal or judicial review.

15 (2) A person convicted of another felony offense while on parole  
16 or probation may result in the forfeiture of any credits earned under this  
17 subchapter.

18  
19 16-90-1304. Application.

20 (a) When a person has accumulated enough days, through a combination  
21 of served and earned time equal to the total number of days of the sentence  
22 imposed by the sentencing court, he or she shall have attained completion of  
23 his or her sentence under this subchapter.

24 (b)(1) No less than seven (7) days before the discharge date the  
25 Department of Community Correction shall submit notice to:

26 (A) The prosecuting attorney; and

27 (B) The Parole Board.

28 (2) Within *thirty days (30) before the discharge date*, the  
29 prosecuting attorney or the Parole Board may file a petition in the  
30 sentencing court stating any reasonable objection to early discharge under  
31 this subchapter warranting the forfeiture of earned-discharge credit.

32 (3) If a petition stating an objection under subsection (b)(2)  
33 of this section is lodged, the department shall immediately suspend the  
34 discharge of the sentence pending a review of the evidence contained in the  
35 objection by the sentencing court.

36 (4) A review shall be conducted in the sentencing court within

1 fourteen (14) days of the filing of the petition.

2 (5)(A) Upon the request of the prosecuting attorney or the  
3 Parole Board, the sentencing court shall consider the objections against the  
4 person based solely on the information contained in the petition.

5 (B) The sentencing court shall determine, based on a  
6 preponderance of the evidence, whether the person should not be discharged  
7 from the sentence because if the information contained in the petition had  
8 been known to the Department of Community Correction, the department would  
9 have ordered the forfeiture of any of the discharge credit earned to that  
10 point or if insufficient evidence exists that would warrant the forfeiture of  
11 discharge credit.

12 (C) If the sentencing court finds sufficient evidence  
13 warranting a forfeiture of discharge credits, the department shall make the  
14 necessary forfeiture of earned discharge credit appropriate for the type of  
15 misconduct asserted in the objection.

16 (D)(1) If the sentencing court does not find sufficient  
17 evidence exists that warrants forfeiture of discharge credits, the department  
18 shall discharge the person immediately if the date upon which the completion  
19 of the sentence occurred has passed.

20 (2) If the date for completion of the sentence has  
21 not occurred, the person shall return to the status held at the point the  
22 objection was filed.

23 (6) An appeal may not be taken by either party from the  
24 sentencing court's findings or the department's decision for early discharge.

25  
26 16-90-1305. Notice and effect.

27 (a) Notice of the discharge of the person's sentence under this  
28 section shall be sent to the clerk of the sentencing court.

29 (b) The clerk of the court shall send notice to the Arkansas Crime  
30 Information Center.

31 (c) A person who earns discharge and completion of his or her sentence  
32 under this subchapter is considered as having completed his or her sentence  
33 in full and is not subject to parole or probation revocation for those  
34 sentences.

35  
36 SECTION 83. Arkansas Code § 16-91-110(b)(3), regarding bail bonds on



1 appeal, is amended to read as follows:

2 (3) When a criminal defendant has been found guilty, pleaded guilty,  
3 or pleaded nolo contendere to a criminal offense of murder in the first  
4 degree, § 5-10-102, rape, § 5-14-103, aggravated robbery, § 5-12-103, or  
5 causing a catastrophe, § 5-38-202(a), or the criminal offense of kidnapping,  
6 § 5-11-102, or arson, § 5-38-301, when classified as Class Y felonies, ~~or~~  
7 ~~manufacturing methamphetamine in violation of § 5-64-401~~ manufacturing  
8 methamphetamine, § 5-64-423(a) or the former § 5-64-401, and is sentenced to  
9 death or a term of imprisonment, the court shall not release the defendant on  
10 bail or otherwise pending appeal or for any reason.

11

12 SECTION 84. Arkansas Code § 16-93-101 is amended to read as follows:  
13 16-93-101. Definitions.

14 As used in this act:

15 (1) Case plan" means an individualized accountability and behavior  
16 change strategy for supervised individuals that:

17 (A) Targets and prioritizes the specific criminal risk factors of  
18 the offender based upon his or her assessment results;

19 (B) Matches the type and intensity of supervision and treatment  
20 conditions to the offender's level of risk, criminal risk factors, and  
21 individual characteristics, such as gender, culture, motivational stage,  
22 developmental stage, and learning style;

23 (C) Establishes a timetable for achieving specific behavioral  
24 goals, including a schedule for payment of victim restitution, child support,  
25 and other financial obligations; and

26 (D) Specifies positive and negative actions that will be taken in  
27 response to the supervised individual's behaviors;

28 (2) "Criminal risk factors" are characteristics and behaviors that  
29 affect a person's risk for committing crimes and may include without  
30 limitation the following risk and criminogenic need factors:

31 (A) Antisocial personality;

32 (B) Criminal thinking;

33 (C) Criminal associates;

34 (D) Dysfunctional family;

35 (E) Low levels of employment or education; and

36 (F) Substance abuse.

1           (3) "Evidence-based practices" means policies, procedures, programs,  
2 and practices proven by scientific research to reliably produce reductions in  
3 recidivism;

4           (4) "Intermediate sanctions" means a non-prison accountability measure  
5 imposed on an offender in response to a violation of supervision conditions.  
6 Such measures may include without limitation:

7                   (A) The use of electronic supervision tools;

8                   (B) Drug and alcohol testing or monitoring;

9                   (C) Day or evening reporting;

10                  (D) Restitution;

11                  (E) Forfeiture of earned discharge credits;

12                  (F) Rehabilitative interventions such as substance abuse and  
13 mental health treatment;

14                  (G) Reporting requirements to probation or parole officers;

15                  (H) Community service or community work project;

16                  (I) Secure or unsecure residential treatment facilities; and

17                  (J) Short-term, intermittent incarceration.

18           (5) "Jacket review" means the review of the file of a transfer-  
19 eligible inmate located at any correctional facility in the state by an  
20 individual staff member or team of staff members of the Department of  
21 Community Correction for purposes of preparing the inmate's application for  
22 parole consideration by the Board Parole.

23           (6) "Parole" means the release of the prisoner into the community by  
24 the Parole Board prior to the expiration of his or her term, subject to  
25 conditions imposed by the board and to the supervision of the Department of  
26 Community Correction. When a court or other authority has filed a warrant  
27 against the prisoner, the board may release him or her on parole to answer  
28 the warrant of the court or authority; and

29           ~~(2)~~(7) "Probation" means a procedure under which a defendant, found  
30 guilty upon verdict or plea, is released by the court without imprisonment,  
31 subject to conditions imposed by the court and subject to the supervision of  
32 the Department of Community Correction, but only if the supervision is  
33 requested in writing by the court-;

34           (8) "Recidivism" means the return to incarceration in an Arkansas  
35 Department of Correction or Department of Community Correction community  
36 correctional facility other than a technical violator program within a three-

1 year period;

2 (9) "Risk needs assessment review" means an examination of the results  
3 of a validated risk-needs assessment;

4 (10)(A) "Treatment" means targeted interventions that focus on  
5 criminal risk factors in order to reduce the likelihood of criminal behavior.

6 (B) Treatment options may include without limitation:

7 (i) Community-based programs that are consistent with  
8 evidence-based practices;

9 (ii) Cognitive behavioral programs;

10 (iii) Inpatient and outpatient substance abuse and mental  
11 health programs; and

12 (iv) Other available prevention and intervention programs  
13 that have been scientifically proven to reliably reduce recidivism.

14 (11) "Validated risk-needs assessment" means a determination of a  
15 person's risk to reoffend and the needs that, when addressed, reduce the risk  
16 to reoffend through the use of an actuarial assessment tool that assesses the  
17 dynamic and static factors that drive criminal behavior.

18

19 SECTION 85. Arkansas Code § 16-93-104(a), regarding the supervision  
20 fees for a person on probation or parole, is amended to read as follows:

21 (a)(1) Any offender on probation, ~~or parole, or transfer~~ under  
22 supervision of the Department of Community Correction shall pay to the  
23 department a monthly fee as determined by the Board of Corrections of thirty-  
24 five dollars (\$35.00).

25 (2) The Director of the Department of Community Correction or  
26 his or her designee shall deposit:

27 (A) Twenty-five dollars (\$25.00) of each payment ~~the~~  
28 payments received into the State Treasury as special revenues credited to the  
29 Community Correction Revolving Fund; and

30 (B)(i) Ten dollars (\$10.00) of each payment received into  
31 the Best Practices Fund, § 19-5-1139, to ensure evidence-based programs and  
32 supervision practices are available to offenders supervised on either  
33 probation or parole.

34 (ii) The Board of Correction shall promulgate  
35 regulations for the accounting and distribution of the Best Practices Fund to  
36 ensure that:

1 (a) No less than seventy five percent (75%) of  
2 the funds are used by the Department of Community Correction for direct  
3 services to the offender population it supervises that have been proven,  
4 through research, to reduce recidivism among the offender population served;

5 (b) The direct services may be provided by the  
6 Department of Community Correction, the Department of Human Services, and  
7 community-based vendors meeting these criteria and serving offenders being  
8 supervised by the Department of Community Correction; and

9 (a) No more than ten percent (10%) of the  
10 funds are used to train staff managing the offender population in evidence-  
11 based practices.

12 (3) Expenditures from the ~~fund~~ Community Correction Revolving  
13 Fund shall be used for continuation and expansion of community punishment  
14 programs as established and approved by the Board of Corrections.

15  
16 SECTION 86. Arkansas Code § 16-93-201 is amended to read as follows:

17 16-93-201. Creation – Members – Qualifications and training.

18 (a)(1) There is created the Parole Board, to be composed of seven (7)  
19 members to be appointed from the state at large by the Governor and confirmed  
20 by the Senate.

21 (2) Seven (7) members shall be full-time officials of this  
22 state, one (1) of whom shall be designated by the Governor as the chair of  
23 the board.

24 (3) ~~Members~~ Each member shall serve a seven-year term,  
25 except that the terms shall be staggered by the Governor so that the term of  
26 one (1) member expires each year.

27 (4)(A) A member must have at least a bachelor's degree from an  
28 accredited college or university, and the member should have no less than  
29 five (5) years' professional experience in one (1) of the following fields:

30 (i) Parole supervision;

31 (ii) Probation supervision;

32 (iii) Corrections;

33 (iv) Criminal justice;

34 (v) Law;

35 (vi) Law enforcement;

36 (vii) Psychology;

- 1                   (viii) Psychiatry;  
 2                   (ix) Sociology;  
 3                   (x) Social work; or  
 4                   (xi) Other related field.

5                   (B) If the member does not have at least a bachelor's  
 6 degree from an accredited college or university, he or she must have no less  
 7 than seven (7) years' experience in a field listed in subdivision (a)(4)(A)  
 8 of this section.

9                   (5)(A) A member appointed after July 1, 2011, whether or not he  
 10 or she has served on the board previously, shall complete a comprehensive  
 11 training course developed in compliance with guidelines from the National  
 12 Institute of Corrections, the Association of Paroling Authorities  
 13 International, or the American Probation and Parole Association.

14                   (B) All members shall complete annual training developed  
 15 in compliance with guidelines from the National Institute of Corrections, the  
 16 Association of Paroling Authorities International, or the American Probation  
 17 and Parole Association.

18                   (C) Training components shall include an emphasis on the  
 19 following subjects:

20                   (i) Data-driven decision making;

21                   (ii)(a) Evidence-based practice.

22                   (b) As used in this section, "evidence-based  
 23 practice" means practices proven through research to reduce recidivism;

24                   (iii) Stakeholder collaboration; and

25                   (iv) Recidivism reduction.

26                   (b) If any vacancy occurs on the board prior to the expiration of a  
 27 term, the Governor shall fill the vacancy for the remainder of the unexpired  
 28 term, subject to confirmation by the Senate at its next regular session.

29                   (c) The members of the board may receive expense reimbursement and  
 30 stipends in accordance with § 25-16-901 et seq.

31                   (d) Four (4) members of the board shall constitute a quorum.

32  
 33                   SECTION 87. Arkansas Code § 16-93-206 is amended to read as follows:  
 34                   16-93-206. ~~Board procedures~~ Parole revocation review - Jurisdiction.

35                   ~~(a)(1) For those persons eligible for parole, the Parole Board shall~~  
 36 ~~retain the power to determine which persons shall be placed on parole and to~~

1 ~~fix the time and conditions of the parole.~~

2 ~~(2) The Parole Board shall conduct open meetings and shall make~~  
3 ~~public its findings for each eligible candidate for parole.~~

4 ~~(3) Inmate interviews may be closed to the public.~~

5 ~~(4) The Parole Board retains the right to formulate all~~  
6 ~~policies, rules, and regulations regarding parole, including amendments to~~  
7 ~~those previously formulated by the State Board of Parole and Community~~  
8 ~~Rehabilitation.~~

9 ~~(b)(1)(A) For persons who on or after January 1, 1994, commit felonies~~  
10 ~~under the provisions of a transfer date, except those enumerated in~~  
11 ~~subdivision (c)(1) of this section, the Department of Correction will~~  
12 ~~transfer inmates to the Department of Community Correction subject to rules~~  
13 ~~and regulations promulgated by the Board of Corrections and conditions set by~~  
14 ~~the Parole Board.~~

15 ~~(B) The conditions under which transfer shall occur~~  
16 ~~include, but are not limited to:~~

17 ~~(i) Level of supervision;~~

18 ~~(ii) Economic fee sanction;~~

19 ~~(iii) Treatment program; and~~

20 ~~(iv) Other conditions relevant to the individual~~  
21 ~~under review.~~

22 ~~(C) This review may be conducted without a hearing when:~~

23 ~~(i) The inmate has not received a major disciplinary~~  
24 ~~report against him or her that resulted in the loss of good time;~~

25 ~~(ii) There has not been a request by a victim to~~  
26 ~~have input on transfer conditions; and~~

27 ~~(iii) There is no indication in the risk needs~~  
28 ~~assessment review that special conditions need to be placed on the inmate.~~

29 ~~(2)(A) When one (1) or more of the circumstances in subdivision~~  
30 ~~(b)(1) of this section are present, the Parole Board shall conduct a hearing~~  
31 ~~to determine the appropriateness of the inmate for transfer.~~

32 ~~(B) The Parole Board has two (2) options:~~

33 ~~(i) To transfer the individual to the Department of~~  
34 ~~Community Correction accompanied by conditions of the transfer, including,~~  
35 ~~but not limited to, supervision levels, programming requirements, and~~  
36 ~~facility placement when appropriate; or~~

1                   (ii)(a) ~~To deny the transfer based on a set of~~  
2 ~~established criteria and to accompany the denial with a course of action to~~  
3 ~~be undertaken by the inmate to rectify the board's concerns.~~

4                   (b) ~~Upon completion of the course of action~~  
5 ~~determined by the Parole Board, after final review of the inmate's file to~~  
6 ~~ensure successful completion, the Parole Board shall authorize the inmate's~~  
7 ~~transfer to the Department of Community Correction in accordance with~~  
8 ~~administrative policies and procedures governing a transfer and subject to~~  
9 ~~conditions attached to the transfer.~~

10                  (3) ~~Should an inmate fail to fulfill the course of action~~  
11 ~~outlined by the Parole Board to facilitate transfer to the Department of~~  
12 ~~Community Correction, it shall be the responsibility of the inmate to~~  
13 ~~petition the Parole Board for rehearing.~~

14                  (4)(A) ~~The course of action required by the Parole Board shall~~  
15 ~~not be outside the current resources of the Department of Correction, nor~~  
16 ~~shall conditions set be outside the current resources of the Department of~~  
17 ~~Community Correction.~~

18                  (B) ~~However, the Department of Correction and the~~  
19 ~~Department of Community Correction shall strive to accommodate the actions~~  
20 ~~required by the Parole Board to the best of their ability.~~

21                  (c)(1) ~~A person who commits the following felonies on or after January 1,~~  
22 ~~1994, shall be eligible to be considered for discretionary transfer to the~~  
23 ~~Department of Community Correction by the Parole Board after having served~~  
24 ~~one third (1/3) or one half (1/2) of his or her sentence, with credit for~~  
25 ~~meritorious good time, depending on the seriousness determination made by the~~  
26 ~~Arkansas Sentencing Commission, or one half (1/2) of the time to which his or~~  
27 ~~her sentence is commuted by executive clemency, with credit for meritorious~~  
28 ~~good time.~~

29                         (A) ~~Any homicide, §§ 5-10-101—5-10-105;~~

30                         (B) ~~Sexual assault in the first degree, § 5-14-124;~~

31                         (C) ~~Sexual assault in the second degree, § 5-14-125;~~

32                         (D) ~~Battery in the first degree, § 5-13-201;~~

33                         (E) ~~Domestic battering in the first degree, § 5-26-303; or~~

34                         (F) ~~The following Class Y felonies:~~

35                                 (i) ~~Kidnapping, § 5-11-102;~~

36                                 (ii) ~~Rape, § 5-14-103;~~

1                                   ~~(iii) Aggravated robbery, § 5-12-103; or~~  
2                                   ~~(iv) Causing a catastrophe, § 5-38-202(a);~~  
3                                   ~~(G) Engaging in a continuing criminal enterprise, § 5-64-~~  
4 ~~405; or~~  
5                                   ~~(H) Simultaneous possession of drugs and firearms, § 5-74-~~  
6 ~~106.~~

7                                   ~~(2)(A) The transfer of an offender convicted of an above listed~~  
8 ~~offense is not automatic.~~

9                                   ~~(B) The Parole Board will have the authority to transfer~~  
10 ~~such an inmate at a time when, based on a combination of its opinion and~~  
11 ~~appropriate assessment by a risk needs assessment tool, there is reasonable~~  
12 ~~probability that the inmate can be released without detriment to the~~  
13 ~~community or the inmate.~~

14                                   ~~(C) After the Parole Board has fully considered and denied~~  
15 ~~the transfer of an offender sentenced for committing an offense listed in~~  
16 ~~subdivision (c)(1) of this section, the Parole Board may delay any~~  
17 ~~reconsideration of the transfer for a maximum period of two (2) years.~~

18                                   ~~(3) Notification of the court, prosecutor, sheriff, and the~~  
19 ~~victim or the victim's next of kin shall follow the procedures set forth~~  
20 ~~below:~~

21                                   ~~(A)(i) Before the Parole Board shall grant any transfer,~~  
22 ~~the Parole Board shall solicit the written or oral recommendations of the~~  
23 ~~committing court, the prosecuting attorney, and the sheriff of the county~~  
24 ~~from which the inmate was committed.~~

25                                   ~~(ii) If the person whose transfer is being~~  
26 ~~considered by the Parole Board was convicted of one (1) of the Class Y~~  
27 ~~felonies enumerated in subdivision (c)(1) of this section, the Parole Board~~  
28 ~~shall also notify the victim of the crime or the victim's next of kin of the~~  
29 ~~transfer hearing and shall solicit written or oral recommendations of the~~  
30 ~~victim or his or her next of kin regarding the granting of the transfer~~  
31 ~~unless the prosecuting attorney has notified the Parole Board at the time of~~  
32 ~~commitment of the prisoner that the victim or his or her next of kin does not~~  
33 ~~want to be notified of future transfer hearings.~~

34                                   ~~(iii) The recommendations shall not be binding upon~~  
35 ~~the Parole Board in the granting of any transfer but shall be maintained in~~  
36 ~~the inmate's file.~~



1                   ~~(iv) When soliciting recommendations from a victim~~  
2 ~~of a crime, the Parole Board shall notify the victim or his or her next of~~  
3 ~~kin of the date, time, and place of the transfer hearing;~~

4                   ~~(B)(i) The Parole Board shall not schedule transfer~~  
5 ~~hearings at which victims or relatives of victims of crimes are invited to~~  
6 ~~appear at a facility wherein inmates are housed other than the central~~  
7 ~~administration building of the Department of Correction at Pine Bluff.~~

8                   ~~(ii) Nothing herein shall be construed as~~  
9 ~~prohibiting the Parole Board from conducting transfer hearings in two (2)~~  
10 ~~sessions, one (1) at the place of the inmate's incarceration for interviews~~  
11 ~~with the inmate, the inmate's witnesses, and correctional personnel, and the~~  
12 ~~second session for victims and relatives of victims as set out in subdivision~~  
13 ~~(c)(3)(B)(i) of this section;~~

14                   ~~(C)(i) At the time that any person eligible under~~  
15 ~~subdivision (c)(1) of this section is transferred by the Parole Board, the~~  
16 ~~Department of Community Correction shall give written notice of the granting~~  
17 ~~of the transfer to the sheriff, the committing court, and the chief of police~~  
18 ~~of each city of the first class of the county from which the person was~~  
19 ~~sentenced.~~

20                   ~~(ii) If the person is transferred to a county other~~  
21 ~~than that from which he or she was committed, the Parole Board shall give~~  
22 ~~notice to the chief of police or marshal of the city to which he or she is~~  
23 ~~transferred, to the chief of police of each city of the first class and the~~  
24 ~~sheriff of the county to which he or she is transferred, and to the sheriff~~  
25 ~~of the county from which the person was committed; and~~

26                   ~~(D)(i) It shall be the responsibility of the prosecuting~~  
27 ~~attorney of the county from which the inmate was committed to notify the~~  
28 ~~Parole Board at the time of commitment of the desire of the victim or his or~~  
29 ~~her next of kin to be notified of any future transfer hearings and to forward~~  
30 ~~to the Parole Board the last known address and telephone number of the victim~~  
31 ~~or his or her next of kin.~~

32                   ~~(ii) It shall be the responsibility of the victim or~~  
33 ~~his or her next of kin to notify the Parole Board of any change in address or~~  
34 ~~telephone number.~~

35                   ~~(iii) It shall be the responsibility of the victim~~  
36 ~~or his or her next of kin to notify the Parole Board after the date of~~

1 ~~commitment of any change in regard to the desire to be notified of any future~~  
2 ~~transfer hearings.~~

3 ~~(d)(1) In all other felonies, before the Parole Board sets conditions~~  
4 ~~for transfer of an inmate to community punishment, a victim or his or her~~  
5 ~~next of kin in cases in which the victim is unable to express his or her~~  
6 ~~wishes, who have expressed the wish to be consulted by the Parole Board shall~~  
7 ~~be notified of the date, time, and place of the transfer hearing.~~

8 ~~(2)(A) A victim or his or her next of kin who wishes to be~~  
9 ~~consulted by the Parole Board shall inform the Parole Board in writing at the~~  
10 ~~time of sentencing.~~

11 ~~(B) A victim or his or her next of kin who does not so~~  
12 ~~inform the Parole Board shall not be notified by the Parole Board.~~

13 ~~(3)(A) Victim input to the Parole Board shall be limited to oral~~  
14 ~~or written recommendations on conditions relevant to the offender under~~  
15 ~~review for transfer.~~

16 ~~(B) The recommendations shall not be binding on the Parole~~  
17 ~~Board, but shall be given due consideration within the resources available~~  
18 ~~for transfer.~~

19 ~~(e)(1) The Parole Board shall approve a set of conditions that shall~~  
20 ~~be applicable to all inmates transferred from the Department of Correction to~~  
21 ~~the Department of Community Correction.~~

22 ~~(2) The set of conditions is subject to periodic review and~~  
23 ~~revision as the Parole Board deems necessary.~~

24 ~~(f) The Parole Board shall set such conditions as necessary within the~~  
25 ~~range of correctional resources available at the time of transfer.~~

26 ~~(g)(1) (a)(1) The Parole Board shall serve as the revocation review~~  
27 ~~board for any person subject to either parole or transfer from prison.~~

28 (2) Revocation proceedings for either parole or transfer shall  
29 follow all legal requirements applicable to parole and shall be subject to  
30 any additional policies, rules, and regulations set by the Parole Board.

31 ~~(h) Decisions on parole release, courses of action applicable prior to~~  
32 ~~transfer, and transfer conditions to be set by the Parole Board shall be~~  
33 ~~based on a reasoned and rational plan developed in conjunction with an~~  
34 ~~accepted risk needs assessment tool such that each decision is defensible~~  
35 ~~based on preestablished criteria.~~

36

1 SECTION 88. Arkansas Code § 16-93-210 is amended to read as follows:  
2 16-93-210. ~~Annual~~ Monthly performance report on parole applications and  
3 outcome.

4 (a)(1) ~~Beginning July 31, 2003, and on July 31 of each year~~  
5 ~~thereafter, October 1, 2011,~~ the Parole Board shall submit ~~an annual a~~  
6 monthly report to the Chairpersons of the House and Senate Judiciary  
7 Committees, the Legislative Council, the Board of Corrections, the Governor,  
8 and the Commission on Disparity in Sentencing showing the number of persons  
9 who make application for parole and those who are granted or denied parole  
10 during the ~~fiscal year~~ previous month for each criminal offense  
11 classification.

12 (2) The report shall include a breakdown by race of all persons  
13 sentenced in each criminal offense classification.

14 (3) The report shall include the reason for each denial of  
15 parole, the results of the risk-needs assessment, and the course of action  
16 that accompanies each denial pursuant to § 16-93-615(b)(2)(B)(ii).

17 (b) The board shall cooperate with and upon request make presentations  
18 and provide various reports, to the extent the board's budget will allow, to  
19 the Legislative Council concerning board policy and criteria on discretionary  
20 offender programs and services.

21  
22 SECTION 89. Arkansas Code § 16-93-211(b)(2), regarding transitional  
23 housing for inmates, is amended to read as follows:

24 (2) Subject to conditions of release and consistent with rules  
25 promulgated by the board, placement in a transitional housing facility must  
26 be preceded by:

27 (A) The provision of all applicable notices under ~~§ 16-93-206 §~~  
28 16-93-615; and

29 (B) A hearing conducted by the board.

30  
31 SECTION 90. Arkansas Code Title 16, Chapter 93, Subchapter 3 is  
32 amended to read as follows:

33 Subchapter 3 – Probation — ~~First Offenders~~ and Suspended Imposition of  
34 Sentence

35 16-93-301. ~~Definition~~ Definitions.

36 As used in ~~§§ 16-93-301—16-93-303~~ this subchapter:

1 ~~(1) the procedure, effect, and definition of "expungement" shall be in~~  
2 ~~accordance with that established in § 16-90-901 et seq~~ "Expungement" means  
3 the procedure and effect as defined in § 16-90-901(a); and  
4

5 16-93-302. Probation – First time offenders – Penalties.

6 (a)(1) ~~No person may~~ A person may not avail himself or herself of the  
7 provisions of this section and §§ 16-93-301 and 16-93-303 on more than one  
8 (1) occasion.

9 (2) Any person seeking to avail himself or herself of the  
10 benefits of this section and §§ 16-93-301 and 16-93-303 who falsely  
11 testifies, swears, or affirms to the court that he or she has not previously  
12 availed himself or herself of the benefits of this section and §§ 16-93-301  
13 and 16-93-303 is guilty of a Class D felony.

14 (b)(1) Any person charged under ~~the provisions of~~ this section and §§  
15 16-93-301 and 16-93-303 with keeping the confidential records of first  
16 offenders, as provided in § 16-93-301, who divulges any information contained  
17 in the records to any person or agency other than a law enforcement officer  
18 or judicial officer is guilty of a violation and upon conviction is subject  
19 to a fine of not more than five hundred dollars (\$500).

20 (2) Each violation shall be considered a separate offense.  
21

22 16-93-303. Probation – First time offenders – Procedure.

23 (a)(1)(A)(i) Whenever an accused enters a plea of guilty or nolo  
24 contendere prior to an adjudication of guilt, the judge of the circuit court  
25 or district court, in the case of a defendant who has not been previously  
26 convicted of a felony, without making a finding of guilt or entering a  
27 judgment of guilt and with the consent of the defendant may defer further  
28 proceedings and place the defendant on probation for a period of not less  
29 than one (1) year, under such terms and conditions as may be set by the  
30 court.

31 (ii) A sentence of a fine not exceeding three  
32 thousand five hundred dollars (\$3,500) or an assessment of court costs  
33 against a defendant does not negate the benefits provided by this section or  
34 cause the probation placed on the defendant under this section to constitute  
35 a conviction except under subsections (c)-(e) of this section.

36 (B) However, no person who is found guilty of or pleads

1 guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et  
2 seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim  
3 was under eighteen (18) years of age shall be eligible for expungement or  
4 sealing of the record under this subchapter.

5 (2) Upon violation of a term or condition, the court may enter  
6 an adjudication of guilt and proceed as otherwise provided.

7 (3) Nothing in this subsection shall require or compel any court  
8 of this state to establish first offender procedures as provided in §§ 16-93-  
9 301 – 16-93-303, nor shall any defendant be availed the benefit of §§ 16-93-  
10 301 – 16-93-303 as a matter of right.

11 (b) Upon fulfillment of the terms and conditions of probation or upon  
12 release by the court prior to the termination period thereof, the defendant  
13 shall be discharged without court adjudication of guilt, whereupon the court  
14 shall enter an appropriate order that shall effectively dismiss the case,  
15 discharge the defendant, and expunge the record, if consistent with the  
16 procedures established in § 16-90-901 et seq.

17 (c) During the period of probation described in subdivision  
18 (a)(1)(A)(i) of this section, a defendant is considered as not having a  
19 felony conviction except for:

20 (1) Application of any law prohibiting possession of a firearm  
21 by certain persons;

22 (2) A determination of habitual offender status;

23 (3) A determination of criminal history;

24 (4) A determination of criminal history scores;

25 (5) Sentencing; and

26 (6) A purpose of impeachment as a witness under Rule 609 of the  
27 Arkansas Rules of Evidence.

28 (d) After successful completion of probation placed on the defendant  
29 under this section, a defendant is considered as not having a felony  
30 conviction except for:

31 (1) A determination of habitual offender status;

32 (2) A determination of criminal history;

33 (3) A determination of criminal history scores;

34 (4) Sentencing; and

35 (5) A purpose of impeachment as a witness under Rule 609 of the  
36 Arkansas Rules of Evidence.

1 (e) The eligibility to possess a firearm of a person whose record has  
2 been expunged and sealed under this subchapter and § 16-90-901 et seq. is  
3 governed by § 5-73-103.

4  
5 16-93-304. Probation – First-time offenders – Arkansas Crime  
6 Information Center.

7 (a) All district court judges and circuit court judges shall  
8 immediately report to the Arkansas Crime Information Center, in the form  
9 prescribed by the center, all probations of criminal defendants under §§ 16-  
10 93-301 – 16-93-303.

11 (b) Prior to granting probation to a criminal defendant under §§ 16-  
12 93-301 – 16-93-303, the court shall query the center to determine whether the  
13 criminal defendant has previously been granted probation under the provisions  
14 of §§ 16-93-301 – 16-93-303.

15 (c) If the center determines that an individual has utilized §§ 16-93-  
16 301 – 16-93-303 more than one (1) time, the center shall notify the last  
17 sentencing judge of that fact.

18  
19 16-93-305. Probation – First time offenders – Sex offender may not  
20 reside with minor victim.

21 (a) Whenever an accused who enters a plea of guilty or nolo contendere  
22 prior to an adjudication of guilt for any sexual offense defined in § 5-14-  
23 101 et seq. or incest as defined in § 5-26-202 for a sexual offense or incest  
24 perpetrated against a minor is eligible for probation under procedures  
25 defined in § 16-93-303 or any other provision of law, as a condition of  
26 granting probation the court shall prohibit the accused, upon release, from  
27 residing in a residence with any minor unless the court makes a specific  
28 finding that the accused poses no danger to the minors residing in the  
29 residence.

30 (b) Upon violation of this condition of probation, the court may enter  
31 an adjudication of guilt and proceed as otherwise provided by law.

32  
33 16-93-306. Probation generally – Supervision.

34 (a)(1) The Director of the Department of Community Correction with the  
35 advice of the Board of Corrections shall establish written policies and  
36 procedures governing the supervision of probationers designed to enhance

1 public safety and to assist the probationers in integrating into society.

2 (2)(A) The supervision of probationers shall be based on evidence-  
3 based practices including a validated risk-needs assessment.

4 (B) Decisions shall target the probationer's criminal risk  
5 factors with appropriate supervision and treatment.

6 (b) A probation officer shall:

7 (1) Investigate all cases referred to him or her by the  
8 director, the sentencing judge, or the prosecuting attorney;

9 (2) Furnish to each probationer under his or her supervision a  
10 written statement of the conditions of probation and instruct the probationer  
11 that he or she must stay in compliance with the conditions of probation or  
12 risk revocation under § 16-93-308;

13 (3) Develop a case plan for each individual who is assessed as a  
14 moderate to high risk to reoffend based on the risk and needs assessment,  
15 that targets the criminal risk factors identified in the assessment, is  
16 responsive to individual characteristics, and provides supervision of  
17 offenders according to that case plan.

18 (4) Stay informed of the probationer's conduct and condition  
19 through visitation, required reporting, or other methods, and report to the  
20 sentencing court of that information upon request;

21 (5) Use practicable and suitable methods that are consistent  
22 with evidence-based practices to aid and encourage a probationer to improve  
23 his or her conduct and condition and to reduce the risk of recidivism;

24 (6)(A) Conduct a validated risk-needs assessment of the  
25 probationer including without limitation, criminal risk factors and specific  
26 individual needs.

27 (B) The actuarial assessment shall include an initial  
28 screening and, if necessary, a comprehensive assessment;

29 (7) The results of the risk-needs assessment shall assist in  
30 making decisions that are consistent with evidence-based practices on the  
31 type of supervision and services necessary to each parolee; and

32 (8) Receive annual training on evidence-based practices and  
33 criminal risk factors, as well as instruction on how to target these factors  
34 to reduce recidivism.

35 (c)(1) The department shall allocate resources, including the  
36 assignment of probation officers, to focus on moderate-risk and high-risk

1 offenders as determined by the actuarial assessment provided in subdivision  
2 (b)(5) of this section.

3 (2) The department shall require public and private treatment  
4 and service providers that receive state funds for the treatment of or  
5 service for probationers to use evidence-based programs and practices.

6 (d)(1) The department shall have the authority to sanction  
7 probationers administratively without utilizing the revocation process under  
8 § 16-93-307.

9 (2)(A) The department shall develop an intermediate sanctions  
10 procedure and grid to guide a probation officer in determining the  
11 appropriate response to a violation of conditions of supervision.

12 (B) Intermediate sanctions administered by the department  
13 are required to conform to the sanctioning grid.

14 (3) Intermediate sanctions shall include without limitation:

15 (A) Day reporting;

16 (B) Community service;

17 (C) Increased substance abuse screening and or treatment;

18 (D) Increased monitoring including electronic monitoring  
19 and home confinement;

20 (E)(i) Incarceration in a county jail for no more than  
21 seven (7) days.

22 (ii) Incarceration as an intermediate sanction shall  
23 not be used more than ten (10) times with an individual probationer, and no  
24 probationer shall accumulate more than thirty (30) days incarceration as an  
25 intermediate sanction before the probation officer recommends a violation of  
26 the person's probation under § 16-93-307.

27  
28 16-93-307. Probation generally – Revocation hearings.

29 (a)(1) A defendant arrested for violation of suspension or probation  
30 is entitled to a preliminary hearing to determine whether there is reasonable  
31 cause to believe that he or she has violated a condition of suspension or  
32 probation.

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

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



1                   (A) Time and place of the preliminary hearing;  
2                   (B) Purpose of the preliminary hearing; and  
3                   (C) Condition of suspension or probation the defendant is  
4 alleged to have violated.

5                   (4) Except as provided in subsection (c) of this section, the  
6 defendant has the right to hear and controvert evidence against him or her  
7 and to offer evidence in his or her own behalf.

8                   (5)(A) If the court conducting the preliminary hearing finds  
9 that there is reasonable cause to believe that the defendant has violated a  
10 condition of suspension or probation, it may order the defendant to be  
11 detained or it may return the defendant to supervision and may consider  
12 imposing one or more intermediate sanctions in the sanctioning grid pending  
13 further revocation proceedings before the court that originally suspended  
14 imposition of sentence on the defendant or placed him or her on probation.

15                   (B)(i) If the court conducting the preliminary hearing  
16 does not find reasonable cause, it shall order the defendant released from  
17 custody.

18                   (ii) However, a release under subdivision  
19 (a)(5)(B)(i) of this section does not bar the court that suspended imposition  
20 of sentence on the defendant or placed him or her on probation from holding a  
21 hearing on the alleged violation of suspension or probation or from ordering  
22 that the defendant appear before it.

23                   (6) The court conducting the preliminary hearing shall prepare  
24 and furnish to the court that suspended imposition of sentence on the  
25 defendant or placed him or her on probation a summary of the preliminary  
26 hearing, including the responses of the defendant and the substance of the  
27 documents and evidence given in support of revocation.

28                   (b)(1) A suspension or probation shall not be revoked except after a  
29 revocation hearing.

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

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

35                   (A) Time and place of the revocation hearing;

36                   (B) Purpose of the revocation hearing; and

1                   (C) Condition of suspension or probation the defendant is  
2 alleged to have violated.

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

5                   (A) Hear and controvert evidence against him or her;

6                   (B) Offer evidence in his or her own defense; and

7                   (C) Be represented by counsel.

8                   (5) If suspension or probation is revoked, the court shall  
9 prepare and furnish to the defendant a written statement of the evidence  
10 relied on and the reasons for revoking suspension or probation.

11                   (c) At a preliminary hearing pursuant to subsection (a) of this  
12 section or a revocation hearing pursuant to subsection (b) of this section:

13                   (1) The defendant has the right to counsel and to confront and  
14 cross-examine an adverse witness unless the court specifically finds good  
15 cause for not allowing confrontation; and

16                   (2) The court may permit the introduction of any relevant  
17 evidence of the alleged violation, including a letter, affidavit, and other  
18 documentary evidence, regardless of its admissibility under the rules  
19 governing the admission of evidence in a criminal trial.

20                   (d) A preliminary hearing pursuant to subsection (a) of this section  
21 is not required if:

22                   (1) The defendant waives the preliminary hearing;

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

26                   (3) The revocation hearing pursuant to subsection (b) of this  
27 section is held promptly after the arrest and in the judicial district where  
28 the alleged violation occurred or where the defendant was arrested.

29  
30                   16-93-308. Probation generally – Revocation.

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

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

35                   (b) At any time before the expiration of a period of suspension or  
36 probation, any law enforcement officer may arrest a defendant without a

1 warrant if the law enforcement officer has reasonable cause to believe that  
2 the defendant has failed to comply with a condition of his or her suspension  
3 or probation.

4 (c) A defendant arrested for violation of suspension or probation  
5 shall be taken immediately before the court that suspended imposition of  
6 sentence or, if the defendant was placed on probation, before the court  
7 supervising the probation.

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

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

15 (f) A court may revoke a suspension or probation subsequent to the  
16 expiration of the period of suspension or probation if before expiration of  
17 the period:

18 (1) The defendant is arrested for violation of suspension or  
19 probation;

20 (2) A warrant is issued for the defendant's arrest for violation  
21 of suspension or probation;

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

25 (4) The defendant has been:

26 (A) Issued a citation in lieu of arrest under Rule 5 of  
27 the Arkansas Rules of Criminal Procedure for violation of suspension or  
28 probation; or

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

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

35 (B) However, any sentence to pay a fine or of  
36 imprisonment, when combined with any previous fine or imprisonment imposed

1 for the same offense, shall not exceed the limits of § 5-4-201 or § 5-4-401,  
2 or if applicable, § 5-4-501.

3 (2)(A) As used in this subsection, “any sentence” includes the  
4 extension of a period of suspension or probation.

5 (B) If an extension of suspension or probation is made  
6 upon revocation, the court is not deprived of the ability to revoke the  
7 suspension or probation again should the defendant’s conduct again warrant  
8 revocation.

9 (h)(1) A court shall not revoke a suspension of sentence or probation  
10 because of a person’s inability to achieve a high school diploma, general  
11 education development certificate, or gainful employment.

12 (2)(A) However, the court may revoke a suspension of sentence or  
13 probation if the person fails to make a good faith effort to achieve a high  
14 school diploma, general education development certificate, or gainful  
15 employment.

16 (B) As used in this section a “good faith effort” means a  
17 person:

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

21 (ii) Is registered for employment and enrolled and  
22 participating in an employment-training program with the purpose of obtaining  
23 gainful employment.

24  
25 16-93-309. Probation generally – Revocation hearing – Sentence  
26 alternatives.

27 (a) Following a revocation hearing held under § 16-93-307 and in which  
28 a defendant has been found guilty or has entered a plea of guilty or nolo  
29 contendere, the court may:

30 (1) Continue the period of suspension or imposition of sentence  
31 or continue the period of probation;

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

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

35 (4) Impose a period of confinement to be served during the  
36 period of suspension of imposition of sentence or period of probation; or

1           (5) Impose any conditions that could have been imposed upon  
2 conviction of the original offense.

3           (b) Following a revocation hearing in which a defendant is ordered to  
4 continue on a period of suspension or a period of probation, nothing  
5 prohibits the court, upon finding the defendant guilty at a subsequent  
6 revocation hearing, from:

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

8                 (2) Sentencing the defendant to incarceration in the Department  
9 of Correction.

10           (c) If the suspension or probation of a defendant is subsequently  
11 revoked and the defendant is sentenced to a term of imprisonment, any period  
12 of time actually spent in confinement due to the original revocation shall be  
13 credited against the subsequent sentence.

14  
15           16-93-310. Probation generally – Revocation – Community correction  
16 program.

17           (a) When a person sentenced under a community correction program, § 5-  
18 4-312, violates any terms or conditions of his or her sentence or term of  
19 probation, revocation of the sentence or term of probation shall be  
20 consistent with the procedures under this subchapter.

21           (b) Upon revocation, the court of jurisdiction shall determine whether  
22 the offender shall remain under the jurisdiction of the court and be assigned  
23 to a more restrictive community correction program, facility, or institution  
24 for a period of time or committed to the Department of Community Correction.

25           (c)(1) If committed to the Department of Correction, the court shall  
26 specify if the commitment is for judicial transfer of the offender to the  
27 Department of Community Correction or is a regular commitment; and

28                 (2)(A) The court shall commit the eligible offender to the  
29 custody of the Department of Correction under this subchapter for judicial  
30 transfer to the Department of Community Correction subject to the following:

31                         (i) That the sentence imposed provides that the  
32 offender shall serve no more than two (2) years of confinement, with credit  
33 for meritorious good time, with initial placement in a Department of  
34 Community Correction facility; and

35                         (ii) That the initial placement in the Department of  
36 Community Correction is conditioned upon the offender's continuing

1 eligibility for Department of Community Correction placement and the  
2 offender's compliance with all applicable rules and regulations established  
3 by the board for community correction programs.

4 (B) Post-prison supervision shall accompany and follow  
5 programming when appropriate.

6  
7 16-93-311. Probation generally – Restitution.

8 If the court has suspended imposition of sentence or placed a defendant  
9 on probation conditioned upon the defendant's making restitution and the  
10 defendant has not satisfactorily made all of his or her payments when the  
11 probation period has ended, the court may:

12 (1) Continue to assert the court's jurisdiction over the  
13 recalcitrant defendant; and

14 (2) Either:

15 (A) Extend the probation period as the court deems  
16 necessary; or

17 (B) Revoke the defendant's suspended sentence.

18  
19 16-93-312. Probation generally – Modification.

20 (a) During a period of suspension or probation, upon the petition of a  
21 probation officer or a defendant or upon the court's own motion, a court may:

22 (1) Modify a condition imposed on the defendant;

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

24 (3) Impose an additional fine authorized by §§ 5-4-201 and 5-4-  
25 303; or

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

27 (b) Nothing in this section shall limit the Department of Community  
28 Correction from authorizing sanctions within the intermediate sanctions grid  
29 when warranted by the defendant's conduct.

30  
31 16-93-313. Probation generally – Transfer of jurisdiction.

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

1       (b) If jurisdiction over a defendant is transferred under subsection  
2 (a) of this section, the court in the county to which jurisdiction is  
3 transferred has any power with respect to the defendant previously possessed  
4 by the transferring court.

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

8  
9       16-93-314. Probation generally – Discharge.

10       (a)(1) The court may discharge the defendant from probation at any  
11 time; or

12               (2) If a judgment of conviction was not entered by the court at  
13 the time of suspension or probation and the defendant fully complies with the  
14 conditions of suspension or probation for the period of suspension or  
15 probation, the court shall discharge the defendant and dismiss any  
16 proceedings against him or her.

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

21               (2) This subsection does not apply if:

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

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

25  
26       SECTION 91. Arkansas Code § 16-93-402 is repealed.

27       ~~16-93-402. Probation officers.~~

28       ~~(a)(1) When directed by the courts, the probation officers shall~~  
29 ~~report to the court on the conduct and behavior of the probationer while on~~  
30 ~~probation.~~

31       ~~(2) The court may thereupon discharge the probationer from~~  
32 ~~further supervision and may terminate the proceedings against him or her or~~  
33 ~~may extend the probation, as shall seem advisable.~~

34       ~~(b)(1) Whenever, during the period of his or her probation, a~~  
35 ~~probationer placed on probation goes from the county in which he or she is~~  
36 ~~being supervised to another county, jurisdiction over him or her may be~~

1 transferred, in the discretion of the court, from the court for the county  
2 from which he or she goes to the court for the other county, with the  
3 concurrence of the latter court.

4 (2)(A) ~~The court for the county to which jurisdiction is~~  
5 ~~transferred shall have all power with respect to the probationer that was~~  
6 ~~previously possessed by the court for the county from which the transfer was~~  
7 ~~made.~~

8 (B) ~~Under the same conditions this process may be repeated~~  
9 ~~whenever during the period of his or her probation the probationer goes from~~  
10 ~~the county in which he or she is being supervised to another county.~~

11 (c)(1) ~~At any time within the probation period or within the maximum~~  
12 ~~probation period permitted by § 16-93-401 [repealed], the court for the~~  
13 ~~county in which the probationer is being supervised or, if no longer~~  
14 ~~supervised, the court for the county in which he or she was last under~~  
15 ~~supervision may issue a warrant for his or her arrest for violation of~~  
16 ~~probation occurring during the probation period.~~

17 (2) ~~The warrant may be executed by any peace officer authorized~~  
18 ~~to make arrests under the laws of the State of Arkansas.~~

19 (3) ~~If the probationer is arrested in any county other than that~~  
20 ~~in which he or she was last supervised, he or she shall be returned to the~~  
21 ~~county in which the warrant was issued.~~

22 (4) ~~As speedily as possible, the probationer shall be taken~~  
23 ~~before the court having jurisdiction over him or her.~~

24 (5) ~~Thereupon, the court may revoke the probation and require~~  
25 ~~the probationer to serve the sentence imposed or any lesser sentence which~~  
26 ~~might have been originally imposed.~~

27  
28 SECTION 92. Arkansas Code § 16-93-605 is repealed.

29 ~~16-93-605. Felonies committed on or after April 1, 1983—Purpose and~~  
30 ~~construction of sections.~~

31 (a) ~~It is the purpose and intent of this section and §§ 16-93-606—~~  
32 ~~16-93-608 to establish parole eligibility for persons convicted of felonies~~  
33 ~~committed on or after April 1, 1983.~~

34 (b) ~~Nothing in this section or §§ 16-93-606—16-93-608 shall be~~  
35 ~~construed to repeal the parole eligibility laws in effect on the date~~  
36 ~~criminal offenses were committed prior to April 1, 1983.~~



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SECTION 93. Arkansas Code § 16-93-606 is amended to read as follows:

16-93-606. Parole eligibility – Felonies committed on or after April 1, 1983 but before January 1, 1994 – Classification of inmates.

(a) As used in this section, “felony” means a crime classified as Class Y, Class A, or Class B by the laws of this state.

(b) For the purposes of § 16-93-607 and, inmates shall be classified as follows:

(1) A first offender is an inmate convicted of one (1) or more felonies but who has not been incarcerated in some correctional institution in the United States, whether local, state, or federal, for a crime ~~which~~ that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified;

(2) A second offender is an inmate convicted of two (2) or more felonies and who has been once incarcerated in some correctional institution in the United States, whether local, state, or federal, for a crime ~~which~~ that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified;

(3) A third offender is an inmate convicted of three (3) or more felonies and who has been twice incarcerated in some correctional institution in the United States, whether local, state, or federal, for a crime ~~which~~ that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified; and

(4) A fourth offender is an inmate convicted of four (4) or more felonies and who has been incarcerated in some correctional institution in the United States, whether local, state, or federal, three (3) or more times for a crime ~~which~~ that was a felony under the laws of the jurisdiction in which the offender was incarcerated, prior to being sentenced to a correctional institution in this state for the offense or offenses for which he or she is being classified.

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SECTION 94. Arkansas Code § 16-93-607 is amended to read as follows.

16-93-607. Parole eligibility – Felonies committed on or after April 1, 1983 — ~~Parole eligibility but before January 1, 1994.~~

(a) As used in this section, “felony” means a crime classified as Class Y, Class A, or Class B by the laws of this state.

(b) A person who committed a felony prior to April 1, 1983, and who were convicted and incarcerated for that felony, shall be eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed.

(c) A person who commits felonies on or after April 1, 1983, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have their sentence commuted by the Governor, as provided by law. An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. Upon commutation, the inmate is eligible for release on parole as provided in this section;

(2) An inmate classified as a first offender under § 16-93-606, except one under the age of twenty-one (21) years as described in subsection (d) of this section and except one who pleads guilty or has been convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-third (1/3) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances. However, if the trier of fact determines that a deadly weapon was used in the commission of the crime, a first offender twenty-one (21) years of age or older is not eligible for release on parole until a minimum of one-half (½) of the sentence is served, with credit for good-time allowances;

(3) An inmate classified as a second offender under § 16-93-606 and one who pleads guilty or was convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-half (½) of his or her sentence shall have been served, with credit for good-time allowances,

1 or one-half ( $\frac{1}{2}$ ) of the time to which the sentence is commuted by executive  
2 clemency is served, with credit for good-time allowances;

3 (4) An inmate classified as a third offender under § 16-93-606,  
4 upon entering a correctional institution in this state under sentence from a  
5 circuit court, is not eligible for release on parole until a minimum of  
6 three-fourths ( $\frac{3}{4}$ ) of his or her sentence shall have been served, with credit  
7 for good-time allowances, or three-fourths ( $\frac{3}{4}$ ) of the time to which the  
8 sentence is commuted by executive clemency shall have been served, with  
9 credit for good-time allowances; and

10 (5) An inmate classified as a fourth offender under § 16-93-606,  
11 upon entering a correctional institution in this state under sentence from a  
12 circuit court, is not eligible for parole, but he or she shall be entitled to  
13 good-time allowances as provided by law.

14 (d) Any person under the age of twenty-one (21) years who is first  
15 convicted of a felony and committed to the first offender penal institution  
16 or to the Department of Correction for a term of years is eligible for parole  
17 at any time unless a minimum time to be served is imposed consisting of not  
18 more than one-third ( $\frac{1}{3}$ ) of the total time sentenced. In the event the  
19 individual is sentenced to a minimum time to be served, he or she is eligible  
20 for release on parole after serving the minimum time prescribed, with credit  
21 for good-time allowances, and for commutation by the exercise of executive  
22 clemency.

23 (e)(1) When any convicted felon, while on parole, is convicted of  
24 another felony, the felon is to be committed to the Department of Correction  
25 to serve the remainder of his or her original sentence, including any portion  
26 suspended, with credit for good-time allowances. Upon conviction for the  
27 subsequent felony, the court shall require the sentence for the subsequent  
28 felony to be served consecutively with the sentence for the previous felony.

29 (2) Any person found guilty of a felony and placed on probation  
30 or suspended sentence therefor who is subsequently found guilty of another  
31 felony committed while on probation or suspended sentence is to be committed  
32 to the Department of Correction to serve the remainder of his or her  
33 suspended sentence plus the sentence imposed for the subsequent felony. The  
34 sentence imposed for the subsequent felony is to be served consecutively with  
35 the remainder of the suspended sentence.

36 (f) For parole eligibility purposes, consecutive sentences by

1 one (1) or more courts or for one (1) or more counts are to be considered as  
2 a single commitment reflecting the cumulative sentence to be served.

3 (g) Nothing in this section shall be construed to reduce, lessen, or  
4 in any manner take away or affect the good-time allowances earned by any  
5 individual prior to April 1, 1983.

6

7 SECTION 95. Arkansas Code § 16-93-608 is amended to read as follows:

8 16-93-608. Parole eligibility - Class C or Class D felonies committed  
9 on or after April 1, 1983 but before January 1, 1994.

10 A person who commits a Class C felony or Class D felony on or after  
11 April 1, 1983, and who is incarcerated therefor is eligible for release on  
12 parole after having served one-third (1/3) of his or her sentence, with  
13 credit for good-time allowances, or one-third (1/3) of the time to which his  
14 or her sentence is commuted by executive clemency, with credit for good-time  
15 allowances.

16

17 SECTION 96. Arkansas Code § 16-93-611 is repealed.

18 ~~16-93-611. Class Y felonies.~~

19 ~~(a)(1) Notwithstanding any law allowing the award of meritorious good~~  
20 ~~time or any other law to the contrary, any person who is found guilty of or~~  
21 ~~pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(G) of this~~  
22 ~~section shall not be eligible for parole or community punishment transfer,~~  
23 ~~except as provided in subdivision (a)(3) or subsection (c) of this section,~~  
24 ~~until the person serves seventy percent (70%) of the term of imprisonment to~~  
25 ~~which the person is sentenced, including a sentence prescribed under § 5-4-~~  
26 ~~501.~~

27 ~~(A) Murder in the first degree, § 5-10-102;~~

28 ~~(B) Kidnapping, Class Y felony, § 5-11-102;~~

29 ~~(C) Aggravated robbery, § 5-12-103;~~

30 ~~(D) Rape, § 5-14-103;~~

31 ~~(E) Causing a catastrophe, § 5-38-202(a);~~

32 ~~(F) Manufacture of methamphetamine, § 5-64-401(a)(1); or~~

33 ~~(G) Possession of drug paraphernalia with the intent to~~  
34 ~~manufacture methamphetamine, § 5-64-403(c)(5).~~

35 ~~(2)(A) The seventy percent (70%) provision of subdivision (a)(1)~~  
36 ~~of this section has no application to any person who is found guilty of or~~

1 ~~pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102,~~  
2 ~~regardless of the date of the offense.~~

3 ~~(B) The provisions of this section shall apply~~  
4 ~~retroactively to all persons presently serving a sentence for kidnapping,~~  
5 ~~Class B felony, § 5-11-102.~~

6 ~~(3)(A)(i) Regardless of the date of the offense, the seventy-~~  
7 ~~percent provision under subdivision (a)(1) of this section shall include~~  
8 ~~credit for the award of meritorious good time under § 12-29-201 to any person~~  
9 ~~who is found guilty of or pleads guilty or nolo contendere to manufacture of~~  
10 ~~methamphetamine under § 5-64-401(a)(1) or possession of drug paraphernalia~~  
11 ~~with the intent to manufacture methamphetamine under § 5-64-403(c)(5).~~

12 ~~(ii) Regardless of the date of the offense, the~~  
13 ~~seventy-percent provision under subdivision (a)(1) of this section may~~  
14 ~~include credit for the award of meritorious good time under § 12-29-202 to~~  
15 ~~any person who is found guilty of or pleads guilty or nolo contendere to~~  
16 ~~manufacture of methamphetamine under § 5-64-401(a)(1) or possession of drug~~  
17 ~~paraphernalia with the intent to manufacture methamphetamine under § 5-64-~~  
18 ~~403(c)(5), unless the person is sentenced to a term of life imprisonment.~~

19 ~~(B) In no event shall the time served by any person who is~~  
20 ~~found guilty of or pleads guilty or nolo contendere to manufacture of~~  
21 ~~methamphetamine under § 5-64-401(a)(1) or possession of drug paraphernalia~~  
22 ~~with the intent to manufacture methamphetamine under § 5-64-403(c)(5) be~~  
23 ~~reduced to less than fifty percent (50%) of the person's original sentence.~~

24 ~~(4)(A) When any person sentenced under subdivision (a)(3) of~~  
25 ~~this section becomes eligible for parole, the Department of Community~~  
26 ~~Correction shall send a notice of the parole hearing to the prosecuting~~  
27 ~~attorney of the judicial district or districts in which the person was found~~  
28 ~~guilty or pleaded guilty or nolo contendere to an offense listed in~~  
29 ~~subdivision (a)(1) of this section.~~

30 ~~(B) The notice shall contain the following language in 12-~~  
31 ~~point capital letters bold type: INMATE SENTENCED UNDER ARKANSAS CODE § 16-~~  
32 ~~93-611.~~

33 ~~(b) A jury may be instructed pursuant to § 16-97-103 regarding the~~  
34 ~~awarding of meritorious good time under subdivision (a)(3) of this section.~~

35 ~~(c) The sentencing judge, in his or her discretion, may waive~~  
36 ~~subsection (a) of this section under the following circumstances:~~

- 1           ~~(1) The defendant was a juvenile at the time of the offense;~~  
2           ~~(2) The juvenile was merely an accomplice to the offense; and~~  
3           ~~(3) The offense occurred on or after July 28, 1995.~~

4           ~~(d) In no event shall the awarding of meritorious good time under §~~  
5 ~~12-29-201 or § 12-29-202 be applicable to persons sentenced under~~  
6 ~~subdivisions (a)(1)(A)-(E) of this section.~~

7  
8           SECTION 97. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
9 amended to add a new section to read as follows:

10           16-93-612. Parole eligibility – Date of offense.

11           (a) A person's parole eligibility shall be determined by the laws in  
12 effect at the time of the offense for which he or she is sentenced to the  
13 Department of Correction.

14           (b) For an offender serving a sentence for a felony committed before  
15 April 1, 1977, § 16-93-601 governs that person's parole eligibility.

16           (c) For an offender serving a sentence for a felony committed between  
17 April 1, 1977, and April 1, 1983, § 16-93-604 governs that person's parole  
18 eligibility.

19           (d) For an offender serving a sentence for a felony committed on or  
20 after April 1, 1983, but before January 1, 1994, § 16-93-607, governs that  
21 person's parole eligibility.

22           (e) For an offender serving a sentence for a felony committed on or  
23 after January 1, 1994, § 16-93-614 governs that person's parole eligibility,  
24 unless otherwise noted and except:

25           (1) If the felony is murder in the first degree, § 5-10-102,  
26 kidnapping, if a Class Y felony, § 5-11-102(b)(1), aggravated robbery, § 5-  
27 12-103, rape, § 5-14-103, or causing a catastrophe, § 5-38-202(a), and the  
28 offense occurred after July 28, 1995, § 16-93-618 governs that person's  
29 parole eligibility; or

30           (2) If the felony is manufacturing methamphetamine, § 5-64-  
31 423(a) or the former § 5-64-401, or possession of drug paraphernalia with the  
32 intent to manufacture methamphetamine, the former § 5-64-403(c)(5), and the  
33 offense occurred after April 9, 1999, § 16-93-618 governs that person's  
34 parole eligibility;

35           (f) For an offender serving a sentence for a felony committed on or  
36 after January 1, 1994, § 16-93-615 governs that person's parole eligibility

1 procedures.

2  
3 SECTION 98. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
4 amended to add a new section to read as follows:

5 16-93-613. Parole eligibility - Class Y, Class A, or Class B  
6 felonies.

7 (a) A person who commits a Class Y, Class A, or Class B felony,  
8 except those drug offenses addressed in § 16-93-619 or those Class Y felonies  
9 addressed in § 16-93-614 or § 16-93-618, and who shall be convicted and  
10 incarcerated for that felony, shall be eligible for release on parole as  
11 follows:

12 (1) An inmate under sentence of death or life imprisonment  
13 without parole is not eligible for release on parole but may be pardoned or  
14 have his or her sentence commuted by the Governor, as provided by law.

15 (2)(A) An inmate sentenced to life imprisonment is not eligible  
16 for release on parole unless the sentence is commuted to a term of years by  
17 executive clemency.

18 (B) Upon commutation, the inmate is eligible for release  
19 on parole as provided in this subchapter.

20 (c) For parole eligibility purposes, consecutive sentences by one (1)  
21 or more courts or for one (1) or more counts are to be considered as a single  
22 commitment reflecting the cumulative sentence to be served.

23  
24 SECTION 99. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
25 amended to add a new section to read as follows:

26 16-93-614. Parole eligibility - Offenses committed after January 1,  
27 1994.

28 (a) As used in this section and §§ 16-93-615 – 16-93-617, “felonies”  
29 means those crimes classified as Class Y, Class A, Class B, Class C, Class D,  
30 or unclassified felonies by the laws of this state.

31 (b)(1) A person who committed a felony before January 1, 1994, and who  
32 was convicted and incarcerated for that felony shall be eligible for release  
33 on parole under this section and §§ 16-93-615 – 16-93-617 in accordance with  
34 the parole eligibility law in effect at the time the crime was committed.

35 (2) A person who committed a target offense under the Community  
36 Punishment Act, § 16-93-1201 et seq., before January 1, 1994, and who has not

1 been sentenced to a term of incarceration may waive the right to be released  
2 under the parole eligibility law in effect at the time the crime was  
3 committed and shall become eligible for judicial transfer pursuant to the  
4 transfer provisions provided in subdivision (c)(2) of this section.

5 (3) A person who has committed a felony who is within a target  
6 group as currently defined under § 16-93-1202(10) and who is released on  
7 parole shall be eligible, pursuant to rules and regulations established by  
8 the Parole Board, for commitment to a community correction facility if he or  
9 she is found to be in violation of any of his or her parole conditions,  
10 unless the parole violation constitutes a nontarget felony offense.

11 (c) A person who commits a felony on or after January 1, 1994, and who  
12 shall be convicted and incarcerated for that felony shall be eligible for  
13 transfer to community correction as follows:

14 (1)(A) A inmate under sentence of death or life imprisonment  
15 without parole shall not be eligible for transfer, but may be pardoned or  
16 have his or her sentence commuted by the Governor as provided by law.

17 (B) An inmate sentenced to life imprisonment shall not be  
18 eligible for transfer unless his or her sentence is commuted to a term of  
19 years by executive clemency.

20 (C) Upon commutation, an inmate shall be eligible for  
21 transfer as provided in this section;

22 (2)(A)(i)(a) An offender convicted of a target offense under the  
23 Community Punishment Act, § 16-93-1201 et seq., may be committed to the  
24 Department of Correction and judicially transferred to the Department of  
25 Community Correction by specific provision in the commitment that the trial  
26 court order such a transfer.

27 (b) No other offender is eligible for transfer  
28 to a Department of Community Correction facility.

29 (ii) A copy of the commitment shall be forwarded  
30 immediately to the Department of Correction and to the Department of  
31 Community Correction.

32 (iii) In the event that an offender is sentenced to  
33 the Department of Correction without judicial transfer on one (1) sentence  
34 and concurrently sentenced to the Department of Correction with judicial  
35 transfer on another sentence, the offender shall remain in the Department of  
36 Correction, and the sentence with judicial transfer may be discharged in the



1 same manner as that of an offender transferred back to the Department of  
2 Correction.

3 (B) The Department of Community Correction shall take over  
4 supervision of the offender in accordance with the order of the court.

5 (C) The Department of Community Correction shall provide  
6 for the appropriate disposition of the offender as expeditiously as  
7 practicable under rules and regulations developed by the Board of  
8 Corrections.

9 (D) The offender shall not be transported to the  
10 Department of Correction on the initial placement in a Department of  
11 Community Correction facility pursuant to a judicial transfer.

12 (E) An offender who is transferred back to the Department  
13 of Correction for disciplinary reasons may be considered for transfer to  
14 Department of Community Correction supervision after earning good-time credit  
15 equal to one-half ( $\frac{1}{2}$ ) of the remainder of his or her sentence.

16 (F) An offender who is sentenced after July 31, 2007, and  
17 who is transferred back to the Department of Correction for administrative  
18 reasons is eligible for transfer to Department of Community Correction  
19 supervision in the same manner as an offender who is sentenced to the  
20 Department of Correction without a judicial transfer to the Department of  
21 Community Correction; and

22 (3)(A) Every other classified or unclassified felon who is  
23 incarcerated therefor shall be eligible for transfer to community punishment  
24 after having served one-third ( $\frac{1}{3}$ ) or one-half ( $\frac{1}{2}$ ), with credit for  
25 meritorious good time, of his or her sentence depending on the seriousness  
26 determination made by the Arkansas Sentencing Commission, or one-half ( $\frac{1}{2}$ ),  
27 with credit for meritorious good time, of the time to which his or her  
28 sentence is commuted by executive clemency.

29 (B) For example, a six-year sentence with optimal  
30 meritorious good-time credits will make the offender eligible for transfer in  
31 one (1) year if he or she is required to serve one-third ( $\frac{1}{3}$ ) of his or her  
32 sentence, or one and one-half ( $1\frac{1}{2}$ ) years if he or she is required to serve  
33 one-half ( $\frac{1}{2}$ ) of his or her sentence.

34  
35 SECTION 100. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
36 amended to add a new section to read as follows:

1 16-93-615. Parole eligibility procedures - Offenses committed after  
2 January 1, 1994.

3 (a)(1)(A) An inmate under sentence for any felony, except those listed  
4 in subsection (b) of this section, shall be transferred from the Department  
5 of Correction to the Department of Community Correction under this section, §  
6 16-93-614, § 16-93-616, and § 16-93-617, subject to rules promulgated by the  
7 Board of Corrections and conditions set by the Parole Board.

8 (B) The determination under subdivision (a)(1)(A) of this  
9 section shall be made by reviewing information such as the result of the  
10 risk-needs assessment to inform the decision of whether to release a person  
11 on parole by quantifying that person's risk to reoffend, and if parole is  
12 granted, this information shall be used to set conditions for supervision.

13 (C) The Parole Board shall begin transfer release  
14 proceedings or a preliminary review under this subchapter no later than six  
15 (6) months before a person's transfer eligibility date, and the Parole Board  
16 shall authorize jacket review procedures no later than six (6) months before  
17 a person's transfer eligibility at all institutions holding parole-eligible  
18 inmates to prepare parole applications.

19 (D) This review may be conducted without a hearing when  
20 the inmate has not received a major disciplinary report against him or her  
21 that resulted in the loss of good time, there has not been a request by a  
22 victim to have input on transfer conditions, and there is no indication in  
23 the risk-needs assessment review that special conditions need to be placed on  
24 the inmate.

25 (2)(A) When one (1) or more of the circumstances in subdivision  
26 (a)(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 notice of conditions of the transfer  
31 including without limitation:

32 (a) Supervision levels;

33 (b) Economic fee sanction;

34 (c) Treatment program;

35 (d) Programming requirements; and

36 (e) Facility placement when appropriate; or

1                   (ii) To deny transfer based on a set of established  
2 criteria and to accompany the denial with a prescribed course of action to be  
3 undertaken by the inmate to rectify the Parole Board concerns.

4                   (C) Upon completion of the course of action determined by  
5 the Parole Board and after final review of the inmate's file to ensure  
6 successful completion, the Parole Board shall authorize the inmate's transfer  
7 to the Department of Community Correction under this section, § 16-93-614, §  
8 16-93-616, and § 16-93-617, in accordance with administrative policies and  
9 procedures governing the transfer and subject to conditions attached to the  
10 transfer.

11                  (3) Should an inmate fail to fulfill the course of action  
12 outlined by the Parole Board to facilitate transfer to community correction,  
13 it shall be the responsibility of the inmate to petition the Parole Board for  
14 rehearing.

15                  (4)(A) The Parole Board shall conduct open meetings and shall  
16 make public its findings for each eligible candidate for parole.

17                  (B)(i) Open meetings held under subsection (a)(2)(A) of  
18 this section may be conducted through video-conference technology if the  
19 person is housed at that time in a county jail and if the technology is  
20 available.

21                  (ii) Open meetings utilizing video conference  
22 technology shall be conducted in public.

23                  (5) Inmate interviews may be closed to the public.

24                  (b)(1) An inmate under sentence for one of the following felonies  
25 shall be eligible for discretionary transfer to the Department of Community  
26 Correction by the Parole Board after having served one-third (1/3) or one-  
27 half (1/2) of his or her sentence, with credit for meritorious good time,  
28 depending on the seriousness determination made by the Arkansas Sentencing  
29 Commission, or one-half (1/2) of the time to which his or her sentence is  
30 commuted by executive clemency, with credit for meritorious good time:

31                   (A) Any homicide, §§ 5-10-101 – 5-10-105, unless the  
32 offense is listed under § 16-93-612(e)(1);

33                   (B) Sexual assault in the first degree, § 5-14-124;

34                   (C) Sexual assault in the second degree, § 5-14-125;

35                   (D) Battery in the first degree, § 5-13-201;

36                   (E) Domestic battering in the first degree, § 5-26-303; or

1 (F) The following Class Y felonies:

2 (i) Kidnapping, § 5-11-102, unless the offense is  
3 listed under § 16-93-612(e)(1);

4 (ii) Rape, § 5-14-103, unless the offense is listed  
5 under § 16-93-612(e)(1);

6 (iii) Aggravated robbery, § 5-12-103, unless the  
7 offense is listed under § 16-93-612(e)(1); or

8 (iv) Causing a catastrophe, § 5-38-202(a), unless  
9 the offense is listed under § 16-93-612(e)(1);

10 (G) Engaging in a continuing criminal enterprise, § 5-64-  
11 405; or

12 (H) Simultaneous possession of drugs and firearms, § 5-74-  
13 106.

14 (2) The transfer of an offender convicted of an offense listed  
15 in subdivision (b)(1) of this section is not automatic.

16 (3)(A) Review of an inmate convicted of the enumerated offenses  
17 in subdivision (b)(1) of this section shall be based upon policies and  
18 procedures adopted by the Parole Board for the review, and the Parole Board  
19 shall conduct a risk-needs assessment review.

20 (B) The policies and procedures shall include a provision  
21 for notification of the victim or victims that a hearing shall be held and  
22 records kept of the proceedings and that there be a listing of the criteria  
23 upon which a denial may be based.

24 (4) Any transfer of an offender specified in this subsection  
25 shall be issued upon an order, duly adopted, of the Parole Board in  
26 accordance with such policies and procedures.

27 (5) After the Parole Board has fully considered and denied the  
28 transfer of an offender sentenced for committing an offense listed in  
29 subdivision (b)(1) of this section, the Parole Board may delay any  
30 reconsideration of the transfer for a maximum period of two (2) years.

31 (6) Notification of the court, prosecutor, sheriff, and the  
32 victim or the victim's next of kin for person convicted of an offense listed  
33 in subdivision (b)(1) of this section shall follow the procedures set forth  
34 below:

35 (A)(i) Before the Parole Board shall grant any transfer,  
36 the Parole Board shall solicit the written or oral recommendations of the

1 committing court, the prosecuting attorney, and the sheriff of the county  
2 from which the inmate was committed.

3 (ii) If the person whose transfer is being  
4 considered by the Parole Board was convicted of one (1) of the offenses  
5 enumerated in subdivision (b)(1) of this section, the Parole Board shall also  
6 notify the victim of the crime or the victim's next of kin of the transfer  
7 hearing and shall solicit written or oral recommendations of the victim or  
8 his or her next of kin regarding the granting of the transfer unless the  
9 prosecuting attorney has notified the Parole Board at the time of commitment  
10 of the prisoner that the victim or his or her next of kin does not want to be  
11 notified of future transfer hearings.

12 (iii) The recommendations shall not be binding upon  
13 the Parole Board in the granting of any transfer but shall be maintained in  
14 the inmate's file.

15 (iv) When soliciting recommendations from a victim  
16 of a crime, the Parole Board shall notify the victim or his or her next of  
17 kin of the date, time, and place of the transfer hearing;

18 (B)(i) The Parole Board shall not schedule transfer  
19 hearings at which victims or relatives of victims of crimes are invited to  
20 appear at a facility wherein inmates are housed other than the central  
21 administration building of the Department of Correction at Pine Bluff.

22 (ii) Nothing herein shall be construed as  
23 prohibiting the Parole Board from conducting transfer hearings in two (2)  
24 sessions, one (1) at the place of the inmate's incarceration for interviews  
25 with the inmate, the inmate's witnesses, and correctional personnel, and the  
26 second session for victims and relatives of victims as set out in subdivision  
27 (b)(6)(B)(i) of this section;

28 (C)(i) At the time that any person eligible under  
29 subdivision (c)(1) of this section is transferred by the Parole Board, the  
30 Department of Community Correction shall give written notice of the granting  
31 of the transfer to the sheriff, the committing court, and the chief of police  
32 of each city of the first class of the county from which the person was  
33 sentenced.

34 (ii) If the person is transferred to a county other  
35 than that from which he or she was committed, the Parole Board shall give  
36 notice to the chief of police or marshal of the city to which he or she is

1 transferred, to the chief of police of each city of the first class and the  
2 sheriff of the county to which he or she is transferred, and to the sheriff  
3 of the county from which the person was committed; and

4 (D)(i) It shall be the responsibility of the prosecuting  
5 attorney of the county from which the inmate was committed to notify the  
6 Parole Board at the time of commitment of the desire of the victim or his or  
7 her next of kin to be notified of any future transfer hearings and to forward  
8 to the Parole Board the last known address and telephone number of the victim  
9 or his or her next of kin.

10 (ii) It shall be the responsibility of the victim or  
11 his or her next of kin to notify the Parole Board of any change in address or  
12 telephone number.

13 (iii) It shall be the responsibility of the victim  
14 or his or her next of kin to notify the Parole Board after the date of  
15 commitment of any change in regard to the desire to be notified of any future  
16 transfer hearings.

17 (c)(1) In all other felonies, before the Parole Board sets conditions  
18 for transfer of an inmate to community punishment, a victim or his or her  
19 next of kin in cases in which the victim is unable to express his or her  
20 wishes, who has expressed the wish to be consulted by the Parole Board shall  
21 be notified of the date, time, and place of the transfer hearing.

22 (2)(A) A victim or his or her next of kin who wishes to be  
23 consulted by the Parole Board shall inform the Parole Board in writing at the  
24 time of sentencing.

25 (B) A victim or his or her next of kin who does not so  
26 inform the Parole Board shall not be notified by the Parole Board.

27 (3)(A) Victim input to the Parole Board shall be limited to oral  
28 or written recommendations on conditions relevant to the offender under  
29 review for transfer.

30 (B) The recommendations shall not be binding on the Parole  
31 Board, but shall be given due consideration within the resources available  
32 for transfer.

33 (d)(1) The Parole Board shall approve a set of conditions that shall  
34 be applicable to all inmates transferred from the Department of Correction to  
35 the Department of Community Correction.

36 (2) The set of conditions is subject to periodic review and

1 revision as the Parole Board deems necessary.

2 (e)(1) The course of action required by the Parole Board shall not be  
3 outside the current resources of the Department of Correction nor the  
4 conditions set be outside the current resources of the Department of  
5 Community Correction.

6 (2) However, the Department of Correction and Department of  
7 Community Correction shall strive to accommodate the actions required by the  
8 Board of Corrections to the best of their ability.

9 (f) Transfer is not an award of clemency, and it shall not be  
10 considered as a reduction of sentence or a pardon.

11 (g) Every inmate while on transfer status shall remain in the legal  
12 custody of the Department of Correction under the supervision of the  
13 Department of Community Correction and subject to the orders of the Parole  
14 Board.

15 (h) An inmate who is sentenced under the provisions of § 5-4-501(c) or  
16 § 5-4-501(d) for a serious violent felony or a felony involving violence may  
17 be considered eligible for parole or for community correction transfer upon  
18 reaching regular parole or transfer eligibility, but only after reaching a  
19 minimum age of fifty-five (55) years.

20 (i) Decisions on parole release, courses of action applicable prior to  
21 transfer, and transfer conditions to be set by the Parole Board shall be  
22 based on a reasoned and rational plan developed in conjunction with an  
23 accepted risk needs assessment tool such that each decision is defensible  
24 based on preestablished criteria.

25  
26 SECTION 101. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
27 amended to add a new section to read as follows:

28 16-93-616. Parole eligibility procedures - Offenses committed after  
29 January 1, 1994 - Computation of sentence.

30 (a)(1) Time served for a sentence shall be deemed to begin on the day  
31 sentence is imposed, not on the day a prisoner is received by the Department  
32 of Correction.

33 (2) Time served shall continue only during the time in which an  
34 individual is actually confined in a county jail or other local place of  
35 lawful confinement or while under the custody and supervision of the  
36 Department of Correction.

1           (3) Once sentenced to the Department of Correction, the  
2 department shall retain legal custody of the inmate for the duration of the  
3 original sentence.

4           (b) The sentencing judge shall direct, when he or she imposes  
5 sentence, that time already served by the defendant in jail or other place of  
6 detention shall be credited against the sentence.

7  
8           SECTION 102. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
9 amended to add a new section to read as follows:

10           16-93-617. Parole eligibility procedures - Offenses committed after  
11 January 1, 1994 - Revocation of transfer.

12           (a) In the event an offender transferred under this section, §§ 16-93-  
13 614 - 16-93-616, or § 16-93-618 violates the terms or conditions of his or  
14 her transfer, a hearing shall follow all applicable legal requirements and  
15 shall be subject to any additional policies, rules, and regulations set by  
16 the Parole Board.

17           (b)(1) In the event an offender transferred under this section and §§  
18 16-93-614 - 16-93-617, or § 16-93-618 is found to be or becomes ineligible  
19 for transfer into a Department of Community Correction facility, he or she  
20 shall be transported to the Department of Correction to serve the remainder  
21 of his sentence.

22           (2) Notice of the ineligibility and the reasons therefor shall  
23 be provided to the offender, and a hearing may be requested before the board  
24 if the offender contests the factual basis of the ineligibility. Otherwise,  
25 the board may administratively approve the transfer to the Department of  
26 Correction.

27           (c) An offender who is judicially transferred to a Department of  
28 Community Correction facility and subsequently transferred back to the  
29 Department of Correction by the board for disciplinary or administrative  
30 reasons may not become eligible for any further transfer under § 16-93-  
31 614(c)(2)(E) and (F).

32  
33           SECTION 103. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
34 amended to add a new section to read as follows:

35           16-93-618. Parole eligibility - Certain Class Y felony offenses and  
36 certain methamphetamine offenses - Seventy percent crimes.



1 (a)(1) Notwithstanding any law allowing the award of meritorious good  
2 time or any other law to the contrary, any person who is found guilty of or  
3 pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(H) of this  
4 section shall not be eligible for parole or community punishment transfer,  
5 except as provided in subdivision (a)(3) or subsection (c) of this section,  
6 until the person serves seventy percent (70%) of the term of imprisonment to  
7 which the person is sentenced, including a sentence prescribed under § 5-4-  
8 501:

9 (A) Murder in the first degree, § 5-10-102;

10 (B) Kidnapping, Class Y felony, § 5-11-102;

11 (C) Aggravated robbery, § 5-12-103;

12 (D) Rape, § 5-14-103;

13 (E) Causing a catastrophe, § 5-38-202(a);

14 (F) Manufacturing methamphetamine, § 5-64-423(a) or the  
15 former § 5-64-401;

16 (G) Trafficking methamphetamine, § 5-64-440(b)(1); or

17 (H) Possession of drug paraphernalia with the purpose to  
18 manufacture methamphetamine, the former § 5-64-403(c)(5).

19 (2)(A) The seventy percent (70%) provision of subdivision (a)(1)  
20 of this section has no application to any person who is found guilty of or  
21 pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102,  
22 regardless of the date of the offense.

23 (B) The provisions of this section shall apply  
24 retroactively to all persons presently serving a sentence for kidnapping,  
25 Class B felony, § 5-11-102.

26 (3)(A)(i) Regardless of the date of the offense, the seventy-  
27 percent provision under subdivision (a)(1) of this section shall include  
28 credit for the award of meritorious good time under § 12-29-201 to any person  
29 who is found guilty of or pleads guilty or nolo contendere to:

30 (a) Manufacturing methamphetamine, § 5-64-  
31 423(a) or the former § 5-64-401;

32 (b) Trafficking methamphetamine, § 5-64-  
33 440(b)(1); or

34 (c) Possession of drug paraphernalia with the  
35 purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

36 (ii) Regardless of the date of the offense and

1 unless the person is sentenced to a term of life imprisonment, the seventy-  
2 percent provision under subdivision (a)(1) of this section may include credit  
3 for the award of meritorious good time under § 12-29-202 to any person who is  
4 found guilty of or pleads guilty or nolo contendere to:

5 (a) Manufacturing methamphetamine, § 5-64-  
6 423(a) or the former § 5-64-401;

7 (b) Trafficking methamphetamine, § 5-64-  
8 440(b)(1); or

9 (c) Possession of drug paraphernalia with the  
10 purpose to manufacture methamphetamine, the former § 5-64-403(c)(5).

11 (B) In no event shall the time served by any person who is  
12 found guilty of or pleads guilty or nolo contendere to manufacturing  
13 methamphetamine, § 5-64-423(a) or the former § 5-64-401, trafficking  
14 methamphetamine, § 5-64-440(b)(1), or possession of drug paraphernalia with  
15 the purpose to manufacture methamphetamine, § 5-64-443(a)(2)(B), be reduced  
16 to less than fifty percent (50%) of the person's original sentence.

17 (4)(A) When any person sentenced under subdivision (a)(3) of  
18 this section becomes eligible for parole, the Department of Community  
19 Correction shall send a notice of the parole hearing to the prosecuting  
20 attorney of the judicial district or districts in which the person was found  
21 guilty or pleaded guilty or nolo contendere to an offense listed in  
22 subdivision (a)(1) of this section.

23 (B) The notice shall contain the following language in 12-  
24 point capital letters bold type: "INMATE SENTENCED UNDER ARKANSAS CODE § 16-  
25 93-618".

26 (b) A jury may be instructed under § 16-97-103 regarding the awarding  
27 of meritorious good time under subdivision (a)(3) of this section.

28 (c) The sentencing judge, in his or her discretion, may waive  
29 subsection (a) of this section under the following circumstances:

30 (1) The defendant was a juvenile at the time of the offense;

31 (2) The juvenile was merely an accomplice to the offense; and

32 (3) The offense occurred on or after July 28, 1995.

33 (d) The awarding of meritorious good time under § 12-29-201 or § 12-  
34 29-202 shall not be applicable to persons sentenced under subdivisions  
35 (a)(1)(A)-(H) of this section.

36 (e) A person who commits the offense of possession of drug

1 paraphernalia with the intent to manufacture methamphetamine, § 5-64-443,  
2 after the effective date of this act shall not be subject to the provisions  
3 of this section.

4  
5 SECTION 104. Arkansas Code Title 16, Chapter 93, Subchapter 7 is  
6 amended to read as follows:

7 Subchapter 7

8 ~~– Parole – Grant or Revocation Generally~~

9 16-93-701. ~~Grant~~— Authority to grant and ~~procedures generally~~  
10 parameters.

11 (a)(1) The Parole Board may release on parole any individual eligible  
12 under the provisions of § 16-93-601 who is confined in any correctional  
13 institution administered by the Department of Correction, when in its opinion  
14 there is a reasonable probability that the prisoner can be released without  
15 detriment to the community or himself or herself.

16 (2) All paroles shall issue upon order, duly adopted, of the  
17 board.

18 (b)(1) Before ordering the release of any prisoner, the prisoner shall  
19 be interviewed by the board or a panel designated by the board and, for all  
20 parole decisions after January 1, 2012, the board shall conduct a risk-needs  
21 assessment review of all parole applicants.

22 (2)(A) The parole shall be ordered only for the best interest of  
23 society and not as an award for clemency.

24 (B) The parole shall not be considered as a reduction of  
25 sentence or a pardon.

26 (3) A prisoner shall be placed on parole only when the board  
27 believes that he or she is able and willing to fulfill the obligations of a  
28 law-abiding citizen.

29 (4) Every prisoner, while on parole, shall remain in the legal  
30 custody of the institution from which he or she was released, but shall be  
31 subject to the orders of the board.

32  
33 16-93-702. ~~Grant~~ Procedures – Required recommendations.

34 (a) Before the Parole Board shall grant any parole, the board shall  
35 solicit the written or oral recommendations of the committing court, the  
36 prosecuting attorney, and the sheriff of the county from which the inmate was

1 committed.

2 (b) If the person whose parole is being considered by the board was  
3 convicted of capital murder, § 5-10-101, or of a Class Y, Class A, or Class B  
4 felony, or any violent or sexual offense, the board shall also notify the  
5 victim of the crime, or the victim's next of kin, of the parole hearing and  
6 shall solicit written or oral recommendations of the victim or the victim's  
7 next of kin regarding the granting of the parole, unless the prosecuting  
8 attorney has notified the board at the time of commitment of the prisoner  
9 that the victim or the victim's next of kin does not want to be notified of  
10 future parole hearings.

11 (c) The board shall retain a copy of the recommendations in the  
12 board's file.

13 (d) The recommendations shall not be binding upon the board in the  
14 granting of any parole, but shall be maintained in a file ~~which~~ that shall be  
15 open to the public during reasonable business hours.

16 (e) When soliciting recommendations from a victim of a crime, the  
17 board shall notify the victim or the victim's next of kin of the date, time,  
18 and place of the parole hearing.

19

20 16-93-703. ~~Grant~~ Procedures – Place of hearings.

21 (a) The Parole Board shall not schedule parole hearings at which  
22 victims or relatives of victims of crime are invited to appear at a facility  
23 wherein inmates are housed other than the Central Administration Building of  
24 the Department of Correction at Pine Bluff.

25 (b) Nothing in this section shall be construed as prohibiting the  
26 board from conducting parole hearings in two (2) sessions, one (1) at the  
27 place of the inmate's incarceration for interviews with the inmate, the  
28 inmate's witnesses, and correctional personnel, and the second session for  
29 victims and relatives of victims as set out in subsection (a) of this  
30 section.

31

32 16-93-704. ~~Grant~~ Procedures – Notice to law enforcement personnel and  
33 committing court.

34 (a) At the time that any person is paroled by the Parole Board, the  
35 board shall give written notice of the granting of the parole to the sheriff,  
36 the committing court, and the chief of police of all cities of the first

1 class of the county from which the person was sentenced.

2 (b) If the person is paroled to a county other than that from which he  
3 or she was committed, the board shall give notice to the chief of police or  
4 marshal of the city to which he or she is paroled, to the chief of police of  
5 all cities of the first class, ~~and to~~ the sheriff of the county to which he  
6 or she is paroled, and to the sheriff of the county from which the person was  
7 committed.

8

9 16-93-705. Revocation - ~~Return of parole violator~~ - Hearings Procedures  
10 and hearings generally.

11 (a)(1) At any time during a parolee's release on parole, the Parole  
12 Board may issue a warrant for the arrest of the parolee for violation of any  
13 conditions of parole or may issue a notice to appear to answer a charge of a  
14 violation.

15 (2) The warrant or notice shall be served personally upon the  
16 individual.

17 (3) The warrant shall authorize all officers named in the  
18 warrant to place the parolee in custody at any suitable detention facility  
19 pending a hearing.

20 (4) Any parole officer may arrest a parolee without a warrant or  
21 may deputize any officer with power of arrest to do so by giving him or her a  
22 written statement setting forth that the parolee, in the judgment of the  
23 parole officer, violated conditions of his or her parole.

24 (5) The written statement delivered with the parolee by the  
25 arresting officer to the official in charge of the detention facility to  
26 which the parolee is brought shall be sufficient warrant for detaining him or  
27 her pending disposition.

28 (6) If the board or its designee finds, by a preponderance of  
29 the evidence, that the parolee has inexcusably failed to comply with a  
30 condition of his or her parole, the parole may be revoked at any time prior  
31 to the expiration of the period of parole.

32 (7) A parolee for whose return a warrant has been issued by the  
33 board shall be deemed a fugitive from justice if it is found that the warrant  
34 cannot be served.

35 (8) The board shall determine whether the time from the issuance  
36 of the warrant to the date of arrest, or any part of it, shall be counted as

1 time served under the sentence.

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

5 (2) The hearing shall be conducted by the parole hearing  
6 examiner for the board as soon as practical after arrest and reasonably near  
7 the place of the alleged violation or arrest.

8 (3) The parolee shall be given prior notice of the date, time,  
9 and location of the hearing, the purpose of the hearing, and the conditions  
10 of parole he or she is alleged to have violated.

11 (4) Except as provided in subsection (d) of this section, the  
12 parolee shall have the right to hear and controvert evidence against him or  
13 her, to offer evidence in his or her own behalf, and to be represented by  
14 counsel.

15 (5) 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 order the parolee returned to the custody of the Department of  
18 Correction for a revocation hearing before the board.

19 (6) If the hearing examiner finds that there is reasonable cause  
20 to believe that the parolee has violated a condition of parole, the hearing  
21 examiner may return the offender to parole supervision rather than to the  
22 custody of the Department of Correction and may impose additional supervision  
23 conditions in response to the violating conduct.

24 ~~(6)(7)~~ If the hearing examiner does not find reasonable cause, he  
25 or she shall order the parolee released from custody, but that action shall  
26 not bar the board from holding a hearing on the alleged violation of parole  
27 or from ordering the parolee to appear before it.

28 ~~(7)(8)~~ The hearing examiner shall prepare and furnish to the  
29 board and the parolee a summary of the hearing, including the substance of  
30 the evidence and testimony considered.

31 (c)(1) A parole shall not be revoked except after a revocation  
32 hearing, which shall be conducted by the board or its designee within a  
33 reasonable period of time after the parolee's arrest.

34 (2) The parolee shall be given prior notice of the date, time,  
35 and location of the hearing, the purpose of the hearing, and the conditions  
36 of parole he or she is alleged to have violated.

1 (3) Except as provided in subsection (d) of this section, the  
2 parolee shall have the right to hear and controvert evidence against him or  
3 her, to offer evidence in his or her own defense, and to be represented by  
4 counsel.

5 (4) If parole is revoked, the board or its designee shall  
6 prepare and furnish to the parolee a written statement of evidence relied on  
7 and the reasons for revoking parole.

8 (d) At a preliminary hearing ~~pursuant to~~ under subsection (b) of this  
9 section or a revocation hearing ~~pursuant to~~ under subsection (c) of this  
10 section:

11 (1) The parolee shall have the right to confront and cross-  
12 examine adverse witnesses unless the hearing examiner or the board or its  
13 designee specifically finds good cause for not allowing confrontation; and

14 (2) The parolee may introduce any relevant evidence of the  
15 alleged violation, including letters, affidavits, and other documentary  
16 evidence, regardless of its admissibility under the rules governing the  
17 admission of evidence.

18 (e) A preliminary hearing ~~pursuant to~~ under subsection (b) of this  
19 section shall not be required if:

20 (1) The parolee waives a preliminary hearing; or

21 (2) The revocation hearing ~~pursuant to~~ under subsection (c) of  
22 this section is held promptly after the arrest and reasonably near the place  
23 where the alleged violation occurred or where the parolee was arrested.

24 (f) A preliminary hearing ~~pursuant to~~ under subsection (b) of this  
25 section and a revocation hearing ~~pursuant to~~ under subsection (c) of this  
26 section shall not be necessary if the revocation is based on the parolee's  
27 conviction, guilty plea, or plea of nolo contendere to a felony offense for  
28 which he or she is sentenced to the Department of Correction or to any other  
29 state or federal penal institution.

30  
31 16-93-706. Revocation - ~~Powers of officials and circuit courts~~ Subpoena  
32 of witnesses and documents - ~~Penalties~~.

33 (a)(1) The Chair of the Parole Board or his or her designee, the  
34 hearing officer presiding over any preliminary hearing with respect to an  
35 alleged parole violation, the administrator of the board, or any member of  
36 the board pursuant to the authority of the board to meet and determine

1 whether to revoke parole shall have the power to issue oaths and to subpoena  
2 witnesses to appear and testify and bring before the hearing officer or the  
3 board any relevant books, papers, records, or documents.

4 (2) The subpoena shall be directed to any sheriff, coroner, or  
5 constable of any county where the designated witness resides or is found.  
6 The endorsed affidavit on the subpoena of any person of full age shall be  
7 proof of the service, which shall be served and returned in the same manner  
8 as subpoenas in civil actions in the circuit courts are served and returned.

9 (b) The fees and mileage expenses as prescribed by law for witnesses  
10 in civil cases shall be paid by the Department of Correction.

11 (c)(1) In case of failure or refusal by any person to comply with a  
12 subpoena issued under this section to testify or answer to any matter  
13 regarding which the person may be lawfully interrogated, any circuit court in  
14 this state, on application of the hearing officer or the chair, shall, in  
15 term or vacation, issue an attachment for the person and compel him or her to  
16 comply with the subpoena and appear before the hearing officer or the board  
17 and to produce any testimony and documents as may be required.

18 (2) The circuit court shall have the power to punish any  
19 contempt, in case of disobedience, as in civil cases, or it shall be a  
20 misdemeanor for a witness to refuse or neglect to appear and testify,  
21 punishable upon conviction by a fine of not less than fifty dollars (\$50.00)  
22 nor more than five hundred dollars (\$500).

23 (d) Any person willfully testifying falsely under oath before the  
24 board or at a preliminary hearing in which probable cause for parole  
25 revocation is to be considered as to any matter material to a lawful inquiry  
26 by the board or hearing officer may be charged with perjury and upon  
27 conviction punished accordingly.

28  
29 16-93-708. Parole alternative – Home detention.

30 (a) As used in this section:

31 (1) "Approved electronic monitoring or supervising device" means  
32 any electronic device approved by the Board of Corrections ~~which~~ that meets  
33 the minimum Federal Communications Commission regulations and requirements,  
34 and ~~which~~ that is limited in capability to recording or transmitting  
35 information as to the criminal defendant's presence in the home;

36 (2) "Permanently incapacitated" means an inmate who, as



1 determined by a licensed physician:

2 (A) Has a medical condition that is not necessarily  
3 terminal but renders him or her permanently and irreversibly incapacitated;  
4 and

5 (B) Requires immediate and long-term care; and

6 (3) "Terminally ill" means an inmate who, as determined by a  
7 licensed physician:

8 (A) Has an incurable condition caused by illness or  
9 disease; and

10 (B) Will likely die within two (2) years due to the  
11 illness or disease.

12 (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this  
13 section, a defendant convicted of a felony or misdemeanor and sentenced to  
14 imprisonment may be incarcerated in a home detention program when+ the  
15 Director of the Department of Correction or the Director of the Department of  
16 Community Correction shall communicate to the Parole Board when, in the  
17 independent opinions of either a Department of Correction physician or  
18 Department of Community Correction physician and a consultant physician in  
19 Arkansas, an inmate is either terminally ill or permanently incapacitated and  
20 should be considered for transfer to parole supervision.

21 ~~(i) In the independent opinions of a prison~~  
22 ~~physician and a consultant physician from the community, a person who is~~  
23 ~~incarcerated in the Department of Correction or Department of Community~~  
24 ~~Correction has an incurable illness which on the average will result in death~~  
25 ~~within twelve (12) months; or~~

26 ~~(ii) A person who is incarcerated in the Department~~  
27 ~~of Correction or Department of Community Correction is permanently physically~~  
28 ~~or mentally incapacitated to the degree that the community criteria are met~~  
29 ~~for placement in a nursing home, rehabilitation facility, or setting~~  
30 ~~providing a similar level of care.~~

31 (B) The Director of the Department of Correction or the  
32 Director of the Department of Community Correction shall make the facts  
33 described in subdivision (b)(1)(A) of this section known to the Parole Board  
34 for consideration of early release to home detention.

35 (2) The Board of Corrections shall promulgate rules that will  
36 establish policy and procedures for incarceration in a home detention

1 program.

2 (c)(1) In all instances where the ~~department~~ Department of Correction  
3 may release any inmate to community supervision, in addition to all other  
4 conditions ~~which~~ that may be imposed by the ~~department~~ Department of  
5 Correction, the ~~department~~ Department of Correction may require the criminal  
6 defendant to participate in a home detention program.

7 (2)(A) The term of the home detention shall not exceed the  
8 maximum number of years of imprisonment or supervision to which the inmate  
9 could be sentenced.

10 (B) The length of time the defendant participates in a  
11 home detention program and any good-time credit awarded shall be credited  
12 against the defendant's sentence.

13 (d) The Board of Corrections shall establish policy and procedures for  
14 participation in a home detention program, including, but not limited to,  
15 program criteria, terms, and conditions of release.

16

17 16-93-709. Sex offender may not reside with minors.

18 (a) Whenever an inmate in a facility of the Department of Correction  
19 who has been found guilty of or has pleaded guilty or nolo contendere to any  
20 sexual offense defined in § 5-14-101 et seq., or incest as defined by § 5-26-  
21 202, and the sexual offense or incest was perpetrated against a minor,  
22 becomes eligible for parole and makes application for release on parole, the  
23 Parole Board shall prohibit, as a condition of granting the parole, the  
24 parolee from residing upon parole in a residence with any minor, unless the  
25 board makes a specific finding that the inmate poses no danger to the minors  
26 residing in the residence.

27 (b) If the board, upon a hearing ~~pursuant to~~ under § 16-93-705, finds,  
28 by a preponderance of the evidence, that the parolee has failed to comply  
29 with this condition of parole, the parole may be revoked and the parolee  
30 returned to the custody of the department.

31

32 16-93-710. Parole for inmates who have served their term of  
33 imprisonment in a county jail prior to being processed into the Department of  
34 Correction.

35 (a)(1) Subject to conditions set by the Parole Board, an offender  
36 convicted of a felony and sentenced to a term of imprisonment of two (2)

1 years or less in the Department of Correction, and who has served his or her  
2 term of imprisonment in a county jail prior to being processed into the  
3 Department of Correction, may be paroled from the Department of Correction  
4 county jail backup facility directly to the Department of Community  
5 Correction under parole supervision, and upon eligibility determination,  
6 processed for release by the board.

7 (2) Transfer release proceedings or a preliminary review under  
8 this subchapter shall begin no later than six (6) months prior to a person's  
9 transfer eligibility date, and the Parole Board shall authorize jacket review  
10 procedures at all institutions holding parole-eligible inmates to prepare  
11 parole applications to comply with this time frame.

12 (3) The jacket review will be conducted by staff either from the  
13 Department of Community Correction or by Department of Correction.

14 (b) An offender who has been found guilty of or pleaded guilty or nolo  
15 contendere to a violent offense as defined by § 5-4-501(c)(2) or a Class Y  
16 felony offense shall be ineligible under this section.

17 (c) As determined by the county sheriff, an offender who has committed  
18 violent or sexual acts while incarcerated in a county jail facility shall be  
19 ineligible to participate in the program established by this section.

20  
21 16-93-711. Parole alternatives - Electronic monitoring of parolees.

22 (a) As used in this section, "approved electronic monitoring or  
23 supervising device" means a device described in § 16-93-708(a).

24 (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this  
25 section, an inmate serving a sentence in the Department of Correction may be  
26 released from incarceration if the:

27 (i) Sentence was not the result of a jury or bench  
28 verdict;

29 (ii) Inmate has served one hundred twenty (120) days  
30 of his or her sentence;

31 (iii) Inmate has an approved parole plan;

32 (iv) Inmate was sentenced from a cell in the  
33 sentencing guidelines that does not include incarceration in the presumptive  
34 range;

35 (v) Conviction is for a Class C or Class D felony;

36 (vi) Conviction is not for a crime of violence.

1 regardless of felony level;

2 (vii) Conviction is not a sex offense, regardless of  
3 felony level;

4 (viii) Conviction is not for manufacturing  
5 methamphetamine, § 5-64-423(a) or the former § 5-64-401;

6 (ix) Conviction is not for possession of drug  
7 paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, if  
8 the conviction is a Class C felony or higher;

9 (x) Conviction is not a crime involving the threat  
10 of violence or bodily harm;

11 (xi) Conviction is not for a crime that resulted in  
12 a death; and

13 (xii) Inmate has not previously failed a drug court program.

14  
15 (B) The Director of the Department of Correction or the  
16 Director of the Department of Community Correction shall make the facts  
17 described in subdivision (b)(1)(A) of this section known to the Parole Board  
18 for consideration of electronic monitoring.

19 (2) The Board of Corrections shall promulgate rules that will  
20 establish policy and procedures for an electronic monitoring program.

21 (c)(1) An inmate released from incarceration on parole under this  
22 section shall be supervised by the Department of Community Correction using  
23 electronic monitoring until the inmate's transfer eligibility date or for at  
24 least ninety (90) days of full compliance by the inmate, whichever is sooner.

25 (2)(A) The term of electronic monitoring shall not exceed the  
26 maximum number of years of imprisonment or supervision to which the inmate  
27 could be sentenced.

28 (B) The length of time the defendant participates in an  
29 electronic monitoring program and any good-time credit awarded shall be  
30 credited against the defendant's sentence.

31  
32 16-93-712. Parole supervision.

33 (a)(1) The Parole Board shall establish written policies and  
34 procedures governing the supervision of parolees designed to enhance public  
35 safety and to assist the parolees in reintegrating into society.

36 (2)(A) The supervision of parolees shall be based on evidence-

1 based practices including a validated risk-needs assessment.

2 (B) Decisions shall target the parolee's criminal risk  
3 factors with appropriate supervision and treatment designed to reduce the  
4 likelihood of reoffense.

5 (b) A parole officer shall:

6 (1) Investigate each case referred to him or her by the director  
7 of the Parole Board, the Department of Community Correction, or the  
8 prosecuting attorney;

9 (2) Furnish to each parolee under his or her supervision a  
10 written statement of the conditions of parole and instruct the parolee that  
11 he or she must stay in compliance with the conditions of parole or risk  
12 revocation under § 16-93-705;

13 (3) Develop a case plan for each individual who is assessed as  
14 being moderate to high risk to reoffend based on the risk and needs  
15 assessment that targets the criminal risk factors identified in the  
16 assessment, is responsive to individual characteristics, and provides  
17 supervision of offenders according to that case plan;

18 (4) Stay informed of the parolee's conduct and condition through  
19 visitation, required reporting, or other methods and shall report to the  
20 Parole Board that information upon request;

21 (5) Use practicable and suitable methods that are consistent  
22 with evidence-based practices to aid and encourage a parolee to improve his  
23 or her conduct and condition and to reduce the risk of recidivism;

24 (6)(A) Conduct a validated risk-needs assessment of the parolee,  
25 including without limitation criminal risk factors and specific individual  
26 needs.

27 (B) The actuarial assessment shall include an initial  
28 screening and, if necessary, a comprehensive assessment;

29 (7) Make decisions with the assistance of the risk-needs  
30 assessment that are consistent with evidence-based practices on the type of  
31 supervision and services necessary to each parolee; and

32 (8) Receive annual training on evidence-based practices and  
33 criminal risk factors, as well as instruction on how to target these factors  
34 to reduce recidivism.

35 (c)(1) The Department of Community Correction shall allocate  
36 resources, including the assignment of parole officers, to focus on moderate-

1 risk and high-risk offenders as determined by the validated risk-needs  
 2 assessment provided in subdivision (b)(6) of this section.

3 (2) The Department of Community Correction shall require each  
 4 public and private treatment and service provider that receives state funds  
 5 for the treatment of or service for parolees to use evidence-based programs  
 6 and practices.

7 (d)(1) The Department of Community Correction shall have the authority  
 8 to sanction a parolee administratively without engaging the revocation  
 9 process under § 16-93-705.

10 (2)(A) The Department of Community Correction shall develop an  
 11 intermediate sanctions procedure and grid to guide a parole officer in  
 12 determining the appropriate response to a violation of conditions of  
 13 supervision.

14 (B) Intermediate sanctions administered by the Department  
 15 of Community Correction are required to conform to the sanctioning grid.

16 (3) Intermediate sanctions shall include without limitation:

17 (A) Day reporting;

18 (B) Community service;

19 (C) Increased substance abuse screening or treatment or  
 20 both;

21 (D) Increased monitoring, including electronic monitoring  
 22 and home confinement; and

23 (E)(i) Incarceration in a county jail for no more than  
 24 seven (7) days.

25 (ii) Incarceration as an intermediate sanction shall  
 26 not be used more than ten (10) times with an individual parolee, and no  
 27 parolee shall accumulate more than thirty (30) days incarceration as an  
 28 intermediate sanction before the parole officer files for revocation under §  
 29 16-93-706.

30  
 31 SECTION 105. Arkansas Code Title 16, Chapter 93, Subchapter 10 is  
 32 repealed.

33 ~~Subchapter 10~~

34 ~~—Community Service Work—Acts 1989, No. 957~~

35 ~~16-93-1001. Purpose.~~

36 ~~(a) The congested prison system has resulted in a number of changes~~

1 within the criminal justice system that do not appear readily to the public  
2 eye. One major problem is that we have lost an interim sentencing alternative  
3 between placing a person on probation or a suspended sentence or sending that  
4 person to the prison system. This gap was filled in the past by incarcerating  
5 a person who received a felony suspended sentence which included, as a  
6 condition of the sentence, a period of incarceration in a local detention  
7 facility or incarcerating a person who received a misdemeanor sentence of up  
8 to one (1) year in such a facility. As the prison system backlog inundated  
9 county detention facilities, those spaces were no longer available for these  
10 types of sentences. A result of the insufficient bedspace in county detention  
11 facilities has been that more people are actually being sent to the prison  
12 system in cases where incarceration in county detention facilities is a  
13 viable alternative punishment.

14 (b) This subchapter will help bridge the gap that has been created.  
15 There are incentives for all facets of society. First, although the person  
16 sentenced will be incarcerated, he or she does have an opportunity to "work"  
17 his or her way out of being housed in the prison system. Also, the good time  
18 incentive allows the prisoner to reduce his or her period of incarceration,  
19 not only benefiting him or her, but also making it conducive for sheriffs to  
20 implement work projects and free up their jail space for more violent  
21 offenders. Budgetary cutbacks over the past five (5) years, for example, in  
22 revenue sharing funds from the federal government, have resulted in many  
23 community projects being neglected. An easy example is the clean-up of our  
24 cities, towns, and highways of litter and debris. From the public's  
25 standpoint, this subchapter would most importantly provide a mechanism for  
26 providing these valuable services to the public at a minimal cost. It is  
27 believed that the public will approve of the use of manual labor by persons  
28 as a just punishment.

29  
30 16-93-1002. Definitions.

31 As used in this subchapter:

32 (1) "Community work project" means any program in which county jail  
33 inmates are allowed to work under the supervision of governmental agencies on  
34 projects on public lands, buildings, roads, parks, and public rights-of-way  
35 designed to benefit the governmental unit employing the inmates;

36 (2) "Eligible offender" means any person convicted of a misdemeanor

1 ~~offense or felony offense other than a capital felony offense, murder in the~~  
2 ~~first degree, murder in the second degree, rape, kidnapping, aggravated~~  
3 ~~robbery, driving while intoxicated, negligent homicide, or the delivery,~~  
4 ~~possession with intent to deliver, or manufacture of any controlled substance~~  
5 ~~in violation of the Uniform Controlled Substances Act, § 5-64-101 et. seq.;~~  
6 ~~and~~

7 ~~(3) "Work incentive credit" means that an inmate who voluntarily~~  
8 ~~agrees to be sentenced under the appropriate provisions of this subchapter,~~  
9 ~~and successfully performs such services, shall be entitled to receive up to~~  
10 ~~three (3) days credit as designated by the sentencing court toward completion~~  
11 ~~of the inmate's sentence for each day of such service performed.~~

12  
13 ~~16-93-1003. Provisions supplemental.~~

14 ~~This subchapter is supplemental to other alternative sentencing laws~~  
15 ~~and nothing in this subchapter shall repeal any provision of any law~~  
16 ~~providing for alternative sentencing nor shall this subchapter repeal any act~~  
17 ~~passed during the 1989 Regular Session of the General Assembly relating to~~  
18 ~~alternative sentencing.~~

19  
20 ~~16-93-1004. Procedure—Medical and legal costs.~~

21 ~~(a) Any consenting eligible offender who is convicted of a felony or~~  
22 ~~misdemeanor or who enters a plea of guilty or nolo contendere to a felony or~~  
23 ~~misdemeanor may upon recommendation of the prosecuting attorney be sentenced~~  
24 ~~under this subchapter.~~

25 ~~(b) The sentencing court may suspend imposition of the offender's~~  
26 ~~sentence for a period not to exceed the period of years that is the maximum~~  
27 ~~penalty for the offense for which convicted upon condition that the defendant~~  
28 ~~be incarcerated in a county detention facility to participate in a community~~  
29 ~~work project. In order for the defendant to participate in this program,~~  
30 ~~space must be available in the county detention facility as certified by the~~  
31 ~~county sheriff to the Department of Correction. The length of such community~~  
32 ~~work project service and incarceration shall not exceed eighteen (18) months~~  
33 ~~on a felony with work incentive credit or, in the case of a misdemeanor, the~~  
34 ~~maximum length of incarceration provided for the misdemeanor reduced by the~~  
35 ~~work incentive credit.~~

36 ~~(c) In the event that during an offender's service under a community~~



1 ~~work project sentence pursuant to this subchapter, the offender withdraws his~~  
2 ~~or her consent to participate in the project, the sentencing court shall have~~  
3 ~~the offender brought before the court within a reasonable time after~~  
4 ~~receiving such notice from either the sheriff of the county wherein the~~  
5 ~~inmate is incarcerated or the prosecuting attorney of that county and make~~  
6 ~~inquiries of the offender to determine whether or not consent to proceed~~  
7 ~~under the program is being withdrawn. In the event that the court finds that~~  
8 ~~the offender is withdrawing consent to participate in the community work~~  
9 ~~project, the court shall remand the offender to the department if the offense~~  
10 ~~was a felony or, in the case of a misdemeanor, to the sheriff of the county~~  
11 ~~wherein the offense was committed, to serve the remaining portion of the~~  
12 ~~offender's sentence. The offender shall be entitled to all good time and~~  
13 ~~parole eligibility considerations as provided for by law. Any portion of the~~  
14 ~~sentence which was suspended by the court at the time of the original~~  
15 ~~sentence shall not be affected by the court's removal of an offender from~~  
16 ~~participating in the community work project.~~

17 ~~(d) In the event that the offender's conduct while participating in a~~  
18 ~~community work project is unsatisfactory, the court may upon petition filed~~  
19 ~~by the prosecuting attorney schedule a hearing to determine if the offender~~  
20 ~~should be allowed to continue to participate in the community work project.~~  
21 ~~This hearing shall follow the same format and accord the offender the same~~  
22 ~~safeguards as the revocation procedure as outlined in § 5-4-309. The burden~~  
23 ~~of proof necessary for revocation of a sentence under this subchapter shall~~  
24 ~~be a preponderance of the evidence that the offender's conduct has not been~~  
25 ~~satisfactory while participating in a community work project. If the court~~  
26 ~~determined that the offender's conduct has not been satisfactory, the court~~  
27 ~~shall remand the offender to the department if the offense was a felony or,~~  
28 ~~in the case of a misdemeanor, to the sheriff of the county wherein the~~  
29 ~~offense was committed, to serve all or a part of the remaining portion of the~~  
30 ~~offender's original sentence. The offender shall be entitled to all good time~~  
31 ~~and parole eligibility considerations as provided for by law.~~

32 ~~(e) Nothing in this subchapter shall grant any offender the right to~~  
33 ~~be sentenced under these provisions as a matter of right.~~

34 ~~(f) The state shall be responsible for the cost of medical treatment~~  
35 ~~of an eligible offender sentenced pursuant to the felony provisions of this~~  
36 ~~subchapter.~~

1           ~~(1) That is the result of injuries sustained on the work site or~~  
2 ~~during transportation to and from the work site by a governmental agency; or~~

3           ~~(2) That is the result of illness or injuries sustained by~~  
4 ~~persons committed to the county jail and who are assigned to a community work~~  
5 ~~project. However, the department may transfer any inmate committed to jail~~  
6 ~~pursuant to this subchapter to a medical or treatment facility it deems~~  
7 ~~appropriate for the treatment.~~

8           ~~(g) The state shall be responsible for any liability incurred as the~~  
9 ~~result of implementation and execution of this subchapter involving persons~~  
10 ~~sentenced as eligible offenders for felony offenses who, pursuant to this~~  
11 ~~subchapter, may be injured while on a community work project or while being~~  
12 ~~transported to or from a community work project by a governmental agency.~~

13           ~~(h) The state shall reimburse the counties for housing inmates~~  
14 ~~sentenced pursuant to the felony provisions of this subchapter at a rate to~~  
15 ~~be determined by the Board of Corrections.~~

16  
17           SECTION 106. Arkansas Code Title 16, Chapter 93, Subchapter 11 is  
18 repealed.

19           ~~Subchapter 11~~

20           ~~—Community Service Work—Acts 1989, No. 613~~

21  
22           ~~16-93-1101. Definitions.~~

23           ~~As used in this subchapter:~~

24           ~~(1) “Community work project” means any program in which county jail~~  
25 ~~inmates are allowed to work under the supervision of governmental agencies on~~  
26 ~~projects on public lands, buildings, roads, parks, and public rights-of-way~~  
27 ~~designed to benefit the governmental unit utilizing the inmates;~~

28           ~~(2) “Eligible offender” means any person convicted of a misdemeanor~~  
29 ~~offense or felony offense other than a capital felony offense, murder in the~~  
30 ~~first degree, murder in the second degree, rape, kidnapping, aggravated~~  
31 ~~robbery, second or subsequent driving while intoxicated offenses, negligent~~  
32 ~~homicide, or the delivery, possession with intent to deliver, or manufacture~~  
33 ~~of any controlled substance in violation of the Arkansas Drug Abuse Control~~  
34 ~~Act, § 20-64-301 et seq.; and~~

35           ~~(3) “Work incentive credit” means that an inmate who voluntarily~~  
36 ~~agrees to be sentenced under the appropriate provisions of this subchapter,~~

1 ~~and successfully performs such services, shall be entitled to receive one (1)~~  
2 ~~day credit as designated by the sentencing court toward completion of the~~  
3 ~~inmate's sentence for each day of such service performed.~~

4  
5 ~~16-93-1102. Procedure generally.~~

6 ~~(a) Any consenting eligible offender who is convicted of a felony or~~  
7 ~~misdemeanor, or who enters a plea of guilty or nolo contendere to a felony or~~  
8 ~~misdemeanor, may upon recommendation of the court be sentenced under this~~  
9 ~~subchapter.~~

10 ~~(b) The sentencing court may suspend imposition of the offender's~~  
11 ~~sentence for a period not to exceed the period of years that is the maximum~~  
12 ~~penalty for the offense convicted upon condition that the defendant be either~~  
13 ~~incarcerated in a county detention facility or, at the discretion of the~~  
14 ~~court, reside at his or her principal residence under the supervision of a~~  
15 ~~probation officer and participate in a community work project. The length of~~  
16 ~~such community work project service and incarceration shall not exceed~~  
17 ~~eighteen (18) months on a felony with work incentive credit or, in the case~~  
18 ~~of a misdemeanor, the maximum length of incarceration provided for the~~  
19 ~~misdemeanor reduced by the work incentive credit.~~

20 ~~(c) In the event that during an offender's service under a community~~  
21 ~~work project sentence pursuant to this subchapter, the offender withdraws his~~  
22 ~~consent to participate in the project, the sentencing court shall have the~~  
23 ~~offender brought before the court within a reasonable time after receiving~~  
24 ~~such notice from either the sheriff of the county wherein the inmate is~~  
25 ~~incarcerated or under probation, or the prosecuting attorney of that county,~~  
26 ~~and the court shall make inquiries of the offender to determine whether or~~  
27 ~~not consent to proceed under the program is being withdrawn. In the event~~  
28 ~~that the court finds that the offender is withdrawing consent to participate~~  
29 ~~in the community work project, the court shall remand the offender to the~~  
30 ~~Department of Correction if the offense was a felony or, in the case of a~~  
31 ~~misdemeanor, to the sheriff of the county wherein the offense was committed,~~  
32 ~~to serve the remaining portion of the offender's sentence. The offender~~  
33 ~~shall be entitled to all good time and parole eligibility considerations as~~  
34 ~~provided for by law. Any portion of the sentence which was suspended by the~~  
35 ~~court at the time of the original sentence shall not be affected by the~~  
36 ~~court's removal of an offender from participating in the community work~~

1 project.

2 ~~(d) In the event that the offender's conduct while participating in a~~  
3 ~~community work project is unsatisfactory, the court may upon petition filed~~  
4 ~~by the prosecuting attorney schedule a hearing to determine if the offender~~  
5 ~~should be allowed to continue to participate in the community work project.~~  
6 ~~This hearing shall follow the same format and accord the offender the same~~  
7 ~~safeguards as the revocation procedure as outlined in § 5-4-309. The burden~~  
8 ~~of proof necessary for revocation of a sentence under this subchapter shall~~  
9 ~~be a preponderance of the evidence that the offender's conduct has not been~~  
10 ~~satisfactory while participating in a community work project. If the court~~  
11 ~~determines that the offender's conduct has not been satisfactory, the court~~  
12 ~~shall remand the offender to the department if the offense was a felony or,~~  
13 ~~in the case of a misdemeanor, to the sheriff of the county wherein the~~  
14 ~~offense was committed, to serve all or part of the remaining portion of the~~  
15 ~~offender's original sentence. The offender shall be entitled to all good time~~  
16 ~~and parole eligibility considerations as provided for by law.~~

17

18 ~~16-93-1103. Rules and regulations.~~

19 ~~The Board of Corrections shall promulgate necessary rules and~~  
20 ~~regulations to be followed by governmental entities in the supervision of~~  
21 ~~eligible offenders utilized under the provisions of this subchapter.~~

22

23 ~~16-93-1104. Immunity from liability.~~

24 ~~All governmental agencies and units utilizing eligible offenders in~~  
25 ~~community work projects shall be immune from liability and suit for damages,~~  
26 ~~and no tort action shall lie against any governmental agency or unit because~~  
27 ~~of the acts of eligible offenders utilized under the provisions of this~~  
28 ~~subchapter.~~

29

30 ~~16-93-1105. Sentence optional.~~

31 ~~Nothing in this subchapter shall grant any offender the right to be~~  
32 ~~sentenced under these provisions as a matter of right.~~

33

34 SECTION 107. Arkansas Code § 16-93-1206 is repealed.

35 ~~16-93-1206. Sentencing alternatives.~~

36 ~~(a)(1) The trial court may require that either a presentence~~

1 investigation be conducted by either the probation officer or presentence  
2 investigation officer assigned to the court or may require that the defense  
3 counsel of the person, the prosecuting authority, the probation officer, and  
4 other persons whom the trial court believes have knowledge or information  
5 relevant to the sentencing of the convicted person submit to the trial court  
6 the information in writing for the sentencing phase of the trial.

7 (2) ~~Either the presentence investigation or information gathered~~  
8 ~~by the above mentioned parties shall be forwarded, with the commitment, to be~~  
9 ~~retained in the offender's file.~~

10 (b) ~~Upon determination by the court that the offender is an eligible~~  
11 ~~offender and that placement in a community correction program is proper, the~~  
12 ~~court may utilize the following methods of placement:~~

13 (1)(A) ~~Suspend the imposition of the sentence or place the~~  
14 ~~offender on probation, pursuant to § 5-4-104, § 5-4-201 et seq., and §§ 5-4-~~  
15 ~~301—5-4-311.~~

16 (B) ~~This sentence may be accompanied by assignment to a~~  
17 ~~community correction program for a designated period of time commensurate~~  
18 ~~with the goals of the program assignment and the rules and regulations~~  
19 ~~established by the Board of Corrections for the operation of community~~  
20 ~~correction programs.~~

21 (C) ~~The trial court shall maintain jurisdiction over the~~  
22 ~~eligible offender sentenced in this manner with supervision outside the~~  
23 ~~confines of the specific programming provided by probation officers assigned~~  
24 ~~to the court;~~

25 (2)(A) ~~In the event a person sentenced under subdivision (b)(1)~~  
26 ~~of this section violates any terms or conditions of his or her sentence or~~  
27 ~~term of probation, revocation of the sentence or term of probation shall be~~  
28 ~~consistent with the procedures established by law for the revocation of~~  
29 ~~suspended imposition of sentence or probation.~~

30 (B) ~~Upon revocation, the court of jurisdiction shall~~  
31 ~~determine whether the offender shall remain under the jurisdiction of the~~  
32 ~~court and be assigned to a more restrictive community correction program,~~  
33 ~~facility, or institution for a period of time or committed to the Department~~  
34 ~~of Community Correction.~~

35 (C) ~~If committed to the Department of Correction, the~~  
36 ~~court shall specify if the commitment is for judicial transfer of the~~

1 offender to the Department of Community Correction or is a regular  
2 commitment; and

3           ~~(3)(A) Commit the eligible offender to the custody of the~~  
4 ~~Department of Correction pursuant to this subchapter for judicial transfer to~~  
5 ~~the Department of Community Correction subject to the following:~~

6                   ~~(i) That the sentence imposed provides that the~~  
7 ~~offender shall serve no more than two (2) years of confinement, with credit~~  
8 ~~for meritorious good time, with initial placement in a Department of~~  
9 ~~Community Correction facility; and~~

10                   ~~(ii) That the initial placement in the Department of~~  
11 ~~Community Correction is conditioned upon the offender's continuing~~  
12 ~~eligibility for Department of Community Correction placement and the~~  
13 ~~offender's compliance with all applicable rules and regulations established~~  
14 ~~by the board for community correction programs.~~

15                   ~~(B) Post-prison supervision shall accompany and follow~~  
16 ~~programming when appropriate.~~

17           ~~(c) No offender may be excluded from placement in a community~~  
18 ~~correction program based solely on the offender's inability to speak, read,~~  
19 ~~write, or hear or to understand English.~~

20  
21           SECTION 108. Arkansas Code Title 16, Chapter 93, Subchapter 13 is  
22 repealed.

23           ~~Subchapter 13—Criteria for Transfer to Community Punishment Programs~~  
24 ~~16-93-1301. Transfer provisions.~~

25           ~~(a) As used in this subchapter, "felonies" means those crimes~~  
26 ~~classified as Class Y, Class A, Class B, Class C, Class D, or unclassified~~  
27 ~~felonies by the laws of this state.~~

28           ~~(b)(1) Persons who committed felonies prior to January 1, 1994, and~~  
29 ~~who were convicted and incarcerated for those felonies shall be eligible for~~  
30 ~~release on parole in accordance with the parole eligibility law in effect at~~  
31 ~~the time the crime was committed.~~

32           ~~(2) Persons who committed target offenses under the Community~~  
33 ~~Punishment Act, § 16-93-1201 et seq., prior to January 1, 1994, and who have~~  
34 ~~not been sentenced to a term of incarceration may waive the right to be~~  
35 ~~released under the parole eligibility law in effect at the time the crimes~~  
36 ~~were committed and shall become eligible for judicial transfer pursuant to~~

1 ~~the transfer provisions provided in subdivision (c)(2) of this section.~~

2 ~~(3) Persons who have committed felonies who are within a target~~  
3 ~~group as currently defined under § 16-93-1202(10) and who are released on~~  
4 ~~parole shall be eligible, pursuant to rules and regulations established by~~  
5 ~~the Parole Board, for commitment to a community correction facility if they~~  
6 ~~are found to be in violation of any of their parole conditions, unless the~~  
7 ~~parole violation constitutes a nontarget felony offense.~~

8 ~~(c) Persons who commit felonies on or after January 1, 1994, and who~~  
9 ~~shall be convicted and incarcerated for those felonies shall be eligible for~~  
10 ~~transfer to community correction as follows:~~

11 ~~(1)(A) Inmates under sentence of death or life imprisonment~~  
12 ~~without parole shall not be eligible for transfer, but may be pardoned or~~  
13 ~~have their sentences commuted by the Governor as provided by law.~~

14 ~~(B) Inmates sentenced to life imprisonment shall not be~~  
15 ~~eligible for transfer unless the sentences are commuted to a term of years by~~  
16 ~~executive clemency.~~

17 ~~(C) Upon commutation, inmates shall be eligible for~~  
18 ~~transfer as provided in this subchapter;~~

19 ~~(2)(A)(i)(a) Offenders convicted of a target offense under the~~  
20 ~~Community Punishment Act, § 16-93-1201 et seq., may be committed to the~~  
21 ~~Department of Correction and judicially transferred to the Department of~~  
22 ~~Community Correction by specific provision in the commitment that the trial~~  
23 ~~court order such a transfer.~~

24 ~~(b) No other offenders are eligible for~~  
25 ~~transfer to a Department of Community Correction facility.~~

26 ~~(ii) A copy of the commitment shall be forwarded~~  
27 ~~immediately to the Department of Correction and to the Department of~~  
28 ~~Community Correction.~~

29 ~~(iii) In the event that an offender is sentenced to~~  
30 ~~the Department of Correction without judicial transfer on one (1) sentence~~  
31 ~~and concurrently sentenced to the Department of Correction with judicial~~  
32 ~~transfer on another sentence, the offender shall remain in the Department of~~  
33 ~~Correction, and the sentence with judicial transfer may be discharged in the~~  
34 ~~same manner as those offenders transferred back to the Department of~~  
35 ~~Correction.~~

36 ~~(B) The Department of Community Correction shall take over~~

1 ~~supervision of the offender in accordance with the order of the court.~~

2 ~~(C) The Department of Community Correction shall provide~~  
3 ~~for the appropriate disposition of the offender as expeditiously as~~  
4 ~~practicable under rules and regulations developed by the Board of~~  
5 ~~Corrections.~~

6 ~~(D) The offender shall not be transported to the~~  
7 ~~Department of Correction on the initial placement in a Department of~~  
8 ~~Community Correction facility pursuant to a judicial transfer.~~

9 ~~(E) An offender who is transferred back to the Department~~  
10 ~~of Correction for disciplinary reasons may be considered for transfer to~~  
11 ~~Department of Community Correction supervision after earning good time credit~~  
12 ~~equal to one-half ( $\frac{1}{2}$ ) of the remainder of his or her sentence.~~

13 ~~(F) An offender who is sentenced after July 31, 2007, and~~  
14 ~~who is transferred back to the Department of Correction for administrative~~  
15 ~~reasons is eligible for transfer to Department of Community Correction~~  
16 ~~supervision in the same manner as an offender who is sentenced to the~~  
17 ~~Department of Correction without a judicial transfer to the Department of~~  
18 ~~Community Correction; and~~

19 ~~(3)(A) All other classified or unclassified felons who are~~  
20 ~~incarcerated therefor shall be eligible for transfer to community punishment~~  
21 ~~after having served one third ( $\frac{1}{3}$ ) or one half ( $\frac{1}{2}$ ), with credit for~~  
22 ~~meritorious good time, of their sentences depending on the seriousness~~  
23 ~~determination made by the Arkansas Sentencing Commission, or one half ( $\frac{1}{2}$ ),~~  
24 ~~with credit for meritorious good time, of the time to which their sentences~~  
25 ~~are commuted by executive clemency.~~

26 ~~(B) For example, a six-year sentence with optimal~~  
27 ~~meritorious good time credits will make the offender eligible for transfer in~~  
28 ~~one (1) year if he or she is required to serve one third ( $\frac{1}{3}$ ) of his or her~~  
29 ~~sentence, or one and one half ( $1\frac{1}{2}$ ) years if he or she is required to serve~~  
30 ~~one half ( $\frac{1}{2}$ ) of his or her sentence.~~

31  
32 ~~16-93-1302. Transfer procedures.~~

33 ~~(a)(1)(A) Inmates under sentence for all felonies except those listed~~  
34 ~~in subsection (b) of this section will be transferred from the Department of~~  
35 ~~Correction to the Department of Community Correction subject to rules and~~  
36 ~~regulations promulgated by the Board of Corrections and conditions set by the~~



1 ~~Parole Board.~~

2 ~~(B) This review may be conducted without a hearing when~~  
3 ~~the inmate has not received a major disciplinary report against him or her~~  
4 ~~which resulted in the loss of good time, there has not been a request by a~~  
5 ~~victim to have input on transfer conditions, and there is no indication in~~  
6 ~~the risk/needs assessment review that special conditions need to be placed on~~  
7 ~~the inmate.~~

8 ~~(2)(A) When one (1) or more of the circumstances in subdivision~~  
9 ~~(a)(1) of this section are present, the Parole Board shall conduct a hearing~~  
10 ~~to determine the appropriateness of the inmate for transfer.~~

11 ~~(B) The Parole Board has two (2) options:~~

12 ~~(i) To transfer the individual to the Department of~~  
13 ~~Community Correction accompanied by conditions of the transfer, including,~~  
14 ~~but not limited to, supervision levels, programming requirements, and~~  
15 ~~facility placement when appropriate; or~~

16 ~~(ii) To deny transfer based on a set of established~~  
17 ~~criteria and to accompany the denial with a course of action to be undertaken~~  
18 ~~by the inmate to rectify the Parole Board concerns.~~

19 ~~(C) Upon completion of the course of action determined by~~  
20 ~~the Parole Board, after final review of the inmate's file to ensure~~  
21 ~~successful completion, the Parole Board shall authorize the inmate's transfer~~  
22 ~~to the Department of Community Correction in accordance with administrative~~  
23 ~~policies and procedures governing the transfer and subject to conditions~~  
24 ~~attached to the transfer.~~

25 ~~(3) Should an inmate fail to fulfill the course of action~~  
26 ~~outlined by the Parole Board to facilitate transfer to community correction,~~  
27 ~~it shall be the responsibility of the inmate to petition the Parole Board for~~  
28 ~~rehearing.~~

29 ~~(b)(1) Inmates under sentence for the following Class Y felonies shall~~  
30 ~~be eligible for discretionary transfer to the Department of Community~~  
31 ~~Correction by the Parole Board after having served the time required as set~~  
32 ~~by the Arkansas Sentencing Commission with credit for meritorious good time:~~

33 ~~(A) Murder in the first degree, § 5-10-102;~~

34 ~~(B) Kidnapping, § 5-11-102;~~

35 ~~(C) Rape, § 5-14-103;~~

36 ~~(D) Aggravated robbery, § 5-12-103;~~

1 ~~(E) Causing a catastrophe, § 5-38-202(a);~~

2 ~~(F) Engaging in a continuing criminal enterprise, § 5-64-~~  
3 ~~405; and~~

4 ~~(G) The manufacture or delivery of a schedule I or~~  
5 ~~schedule II controlled substance which by aggregate weight including~~  
6 ~~adulterants or diluents is greater than twenty eight grams (28 g), § 5-64-~~  
7 ~~401(a)(1).~~

8 ~~(2)(A) Review of inmates convicted of the enumerated offenses in~~  
9 ~~subdivision (b)(1) of this section shall be based upon policies and~~  
10 ~~procedures adopted by the Parole Board for the review.~~

11 ~~(B) The policies and procedures shall include provision~~  
12 ~~for notification of victims, that a hearing shall be held and records kept of~~  
13 ~~such proceedings, and that there be a listing of the criteria upon which a~~  
14 ~~denial may be based.~~

15 ~~(3) All transfers of offenders specified in this subsection~~  
16 ~~shall be issued upon order, duly adopted, of the Parole Board in accord with~~  
17 ~~such policies and procedures.~~

18 ~~(c)(1) The course of action required by the Parole Board shall not be~~  
19 ~~outside the current resources of the Department of Correction nor the~~  
20 ~~conditions set be outside the current resources of the Department of~~  
21 ~~Community Correction.~~

22 ~~(2) However, the departments shall strive to accommodate the~~  
23 ~~actions required by the Board of Corrections to the best of their ability.~~

24 ~~(d) Transfer is not an award of clemency and it shall not be~~  
25 ~~considered as a reduction of sentence or a pardon.~~

26 ~~(e) Every inmate while on transfer status shall remain in the legal~~  
27 ~~eustody of the Department of Correction, under the supervision of the~~  
28 ~~Department of Community Correction, and subject to the orders of the Parole~~  
29 ~~Board.~~

30 ~~(f) Inmates who are sentenced under the provisions of § 5-4-501(e) or~~  
31 ~~(d) for serious violent felonies or felonies involving violence may be~~  
32 ~~considered eligible for parole or for community correction transfer upon~~  
33 ~~reaching regular parole or transfer eligibility, but only after reaching a~~  
34 ~~minimum age of fifty five (55) years.~~

35  
36 ~~16-93-1303. Computation of sentence.~~

1           ~~(a)(1) Time served shall be deemed to begin on the day sentence is~~  
2 ~~imposed, not on the day a prisoner is received by the Department of~~  
3 ~~Correction.~~

4           ~~(2) Time served shall continue only during the time in which an~~  
5 ~~individual is actually confined in a county jail or other local place of~~  
6 ~~lawful confinement or while under the custody and supervision of the~~  
7 ~~Department of Correction.~~

8           ~~(3) Once sentenced to the Department of Correction, the~~  
9 ~~department shall retain legal custody of the inmate for the duration of the~~  
10 ~~original sentence.~~

11          ~~(b) The sentencing judge shall direct, when he or she imposes~~  
12 ~~sentence, that time already served by the defendant in jail or other place of~~  
13 ~~detention shall be credited against the sentence.~~

14  
15          ~~16-93-1304. Revocation of transfer.~~

16          ~~(a) In the event an offender transferred under the provisions of this~~  
17 ~~subchapter violates the terms or conditions of his transfer, a hearing shall~~  
18 ~~follow all applicable legal requirements and shall be subject to any~~  
19 ~~additional policies, rules, and regulations set by the Parole Board.~~

20          ~~(b)(1) In the event an offender transferred under the provisions of~~  
21 ~~this subchapter is found to be or becomes ineligible for transfer into a~~  
22 ~~Department of Community Correction facility, he or she shall be transported~~  
23 ~~to the Department of Correction to serve the remainder of his sentence.~~

24          ~~(2) Notice of the ineligibility and the reasons therefor shall~~  
25 ~~be provided to the offender, and a hearing may be requested before the board~~  
26 ~~if the offender contests the factual basis of the ineligibility. Otherwise,~~  
27 ~~the board may administratively approve the transfer to the Department of~~  
28 ~~Correction.~~

29          ~~(c) An offender who is judicially transferred to a Department of~~  
30 ~~Community Correction facility and subsequently transferred back to the~~  
31 ~~Department of Correction by the board for disciplinary or administrative~~  
32 ~~reasons may become eligible for any further transfer under § 16-93-~~  
33 ~~1301(c)(2)(E) and (F).~~

34  
35          SECTION 109. Arkansas Title 16, Chapter 93, Subchapter 15 is repealed.  
36          ~~Subchapter 15 — Parole — Sentence Served in County Jail~~

1 ~~16-93-1501. Parole for inmates who have served their term of~~  
2 ~~imprisonment in a county jail prior to being processed into the Department of~~  
3 ~~Correction.~~

4 ~~Subject to conditions set by the Parole Board, all offenders convicted~~  
5 ~~of a felony, and sentenced to a term of imprisonment of two (2) years or less~~  
6 ~~in the Department of Correction, and who have served their term of~~  
7 ~~imprisonment in a county jail prior to being processed into the Department of~~  
8 ~~Correction, may be paroled from the Department of Correction county jail~~  
9 ~~backup facility directly to the Department of Community Correction under~~  
10 ~~parole supervision, and upon eligibility determination, processed for release~~  
11 ~~by the board.~~

12  
13 ~~16-93-1502. Program eligibility.~~

14 ~~(a) Offenders who have been found guilty of or pleaded guilty or nolo~~  
15 ~~contendere to a violent offense as defined by § 12-12-1103(11) [repealed] or~~  
16 ~~a Class Y felony offense shall be ineligible to participate in the program~~  
17 ~~established by this subchapter.~~

18 ~~(b) As determined by the county sheriff, offenders who have committed~~  
19 ~~violent or sexual acts while incarcerated in a county jail facility shall be~~  
20 ~~ineligible to participate in the program established by this subchapter.~~

21  
22 SECTION 110. Arkansas Code Title 16, Chapter 93 is amended to add a  
23 new subchapter to read as follows:

24 Subchapter 17 – Swift and Certain Accountability on Probation Pilot  
25 Program

26 16-93-1701. Establishment.

27 The Administrative Office of the Courts shall:

28 (1) Create the Swift and Certain Accountability on Probation  
29 Pilot Program, awarding up to five (5) grants in the program's first year to  
30 counties or judicial districts requesting funds to establish probation  
31 programs to be administered by the Department of Community Correction  
32 designed to reduce recidivism by requiring swift, certain, and graduated  
33 sanctions for probationers in noncompliance;

34 (2) Possess the discretion to determine the appropriate number  
35 of grants based on the amount of money allocated for the grant program and  
36 the capacity of the applicants based on submitted proposals to successfully

1 implement and evaluate the program;

2 (3) Ensure that grants awarded under this subchapter are awarded  
3 in a manner that promotes the strongest proposals and evaluation designs,  
4 that have the broadest impact and that are evenly geographically distributed;  
5 and

6 (4) Employ a person who shall have as one-half (1/2) of his or  
7 her designated job duties the management of the program established under  
8 this subchapter.

9  
10 16-93-1702. Application.

11 (a) A county or judicial district may apply for a grant award under  
12 this subchapter by submitting a written application to the Administrative  
13 Office of the Courts.

14 (b) The application shall include the following:

15 (1) A description of the proposed probation program and the need  
16 in the county or judicial district for the establishment of a probation  
17 program under this subchapter;

18 (2) A description of the long-term strategy and a detailed plan  
19 of implementation, including how the county or judicial district intends to  
20 pay for the probation program after the grant funding is exhausted;

21 (3) A certification that all government or private entities  
22 that would be affected by the proposed probation program have been  
23 appropriately consulted regarding the development of the probation program;

24 (4) A description of the coordination plan involving all  
25 government or private entities in the implementation process;

26 (5) Identification of the governmental and judicial partners in  
27 the proposed probation program, including the chief judge of the circuit  
28 court as well as other participating judges in the applicable jurisdiction,  
29 the court administrator, the probation administrator, the county sheriff, the  
30 prosecuting attorney, the public defender, applicable private defense  
31 attorneys, applicable municipal law enforcement administrators, and  
32 applicable treatment provider administrators; and

33 (6) A description of how and assurances that the applicant will  
34 collect key process measures, including the:

35 (A) Number of probationers enrolled in the program;

36 (B) Frequency of drug testing probationers;

1 (C) Positive drug test rate and other rates of non-  
2 compliance with the measurable conditions of supervision;

3 (D) Kinds of sanctions available for a violation of  
4 probation;

5 (E) Kinds of rewards available for positive behavior;

6 (F) Certainty of the application of an appropriate  
7 sanction;

8 (G) Average period of time from detection of a violation  
9 to issuance of a sanction for the violation;

10 (H) Severity of the sanction; and

11 (I) Time between the completion of the sanction and a  
12 subsequent violation, if any.

13  
14 16-93-1703. Grant uses.

15 (a) A grant awarded under this subchapter shall be used by the grantee  
16 to establish probation programs that:

17 (1) Identify probationers for enrollment in the program,  
18 through, among other tools, a validated risk-needs assessment tool, who are:

19 (A) Serving a term of probation;

20 (B) At high risk of failing to observe the conditions of  
21 supervision; and

22 (C) At high risk of being returned to incarceration as a  
23 result of that failure;

24 (2) Notify probationers of the rules of the probation program,  
25 and consequences for violating those rules;

26 (3) Monitor probationers for illicit drug use with regular and  
27 rapid-result drug screening;

28 (4) Monitor probationers for violations of other rules and  
29 probation terms, including failure to pay court-ordered financial obligations  
30 such as child support or victim restitution;

31 (5) Respond to violations of those rules with immediate arrest  
32 of the violating probationer and swift and certain modification of the  
33 conditions of probation, including imposition of short jail stays;

34 (6) Immediately respond to probationers who have absconded from  
35 supervision with service of bench warrants and immediate sanctions;

36 (7)(A) Provide rewards to probationers who comply with those

1 rules.

2 (B) Rewards shall include without limitation:

3 (i) Reduced reporting requirements;

4 (ii) Less frequent drug testing;

5 (iii) Certificates of achievement;

6 (iv) Other rewards as determined by the locality;

7 and

8 (v) Early termination of the sentence;

9 (8) Ensure funding for and referral to substance abuse treatment  
10 for probationers who repeatedly fail to refrain from illicit drug use;

11 (9) Establish procedures to terminate program participation by,  
12 and initiate revocation to a term of incarceration for probationers who  
13 habitually fail to abide by program rules and pose a threat to public safety;

14 and

15 (10) Include regular coordination meetings for key partners of  
16 the program, including the partners identified under § 16-93-1702(b)(5).

17 (b) As used in this section, "validated risk-needs assessment" means a  
18 determination of a person's risk to reoffend and the needs that, when  
19 addressed, reduce the risk to reoffend through the use of an actuarial  
20 assessment tool that assesses the dynamic and static factors that drive  
21 criminal behavior.

22  
23 16-93-1704. Determination of program savings.

24 (a) Each county or judicial district receiving a grant under this  
25 subchapter shall:

26 (1) Not later than twelve (12) months after an initial grant  
27 award under this section and annually thereafter through the end of the grant  
28 period calculate the amount of cost savings and costs averted, if any,  
29 resulting from the reduced incarceration achieved through the grant program;  
30 and

31 (2) Report to the Administrative Office of the Courts:

32 (A) The amount calculated under subdivision (a)(1) of this  
33 section; and

34 (B) The portion of the amount, if any, that will be  
35 reinvested for expansion of the grant program.

36 (b) The Administrative Office of the Courts shall:

1           (1) Annually evaluate:

2                   (A) The methods used by courts to calculate the cost  
3 savings reported under subdivision (a)(1) of this section; and

4                   (B) The use of the savings by the courts to reinvest for  
5 expansion of the grant program; and

6           (2) Provide guidance, assistance, and recommendations to such  
7 courts relating to the potential reinvestment of such savings for expansion  
8 of the grant program.

9           (c) The Administrative Office of the Courts shall select an entity to  
10 serve as the program initiative evaluation coordinator to:

11                   (1) Analyze and provide feedback on the measures and outcomes  
12 the individual program initiative programs are required to collect and  
13 conduct, respectively, in accordance with § 16-93-1702(b)(6);

14                   (2) Ensure consistent tracking of the progress of the  
15 demonstration programs carried out under this section, including such  
16 measures and outcomes; and

17                   (3) Ensure that the aggregate data from all such programs is  
18 available to each of the programs and to the Administrative Office of the  
19 Courts.

20           (d) The Administrative Office of the Courts shall report annually to  
21 the General Assembly and the Governor the results of the program initiative  
22 carried out under this subchapter.

23  
24           SECTION 111. Arkansas Code § 16-98-301 is amended to read as follows:  
25           16-98-301. Short title and definitions.

26           (a) This subchapter shall be known as the "Arkansas Drug Court Act".

27           (b) As used in this subchapter:

28                   (1) "Evidence-based practices" means practices proven through  
29 research to reduce recidivism;

30                   (2) "Validated risk-needs assessment" means a determination of a  
31 person's risk to reoffend and the needs that, when addressed, reduce the risk  
32 to reoffend through the use of an actuarial assessment tool that assesses the  
33 dynamic and static factors that drive criminal behavior; and

34                   (3) "Violent felony offense" means an offense that is punishable  
35 by a term of imprisonment exceeding one (1) year, and during the course of  
36 the offense:



1                   (A)(i) The person carried, possessed, or used a firearm or  
2 other dangerous weapon; and

3                   (ii) The use of deadly force was used against  
4 another person; or

5                   (B) Death or serious physical injury was inflicted upon  
6 another person, regardless of whether death or serious physical injury was an  
7 element of the crime for which the person was convicted.

8  
9           SECTION 112. Arkansas Code § 16-98-302 is amended to read as follows:  
10           16-98-302. Purpose and intent.

11           (a) There is a critical need for judicial intervention and support for  
12 effective treatment programs that reduce the incidence of drug use, drug  
13 addiction, and family separation due to parental substance abuse and drug-  
14 related crimes. It is the intent of the General Assembly for this subchapter  
15 to enhance public safety by facilitating the creation, expansion, and  
16 coordination of drug court programs.

17           (b) The goals of the drug court programs in this state shall be  
18 consistent with the standards adopted by the United States Department of  
19 Justice and recommended by the National Association of Drug Court  
20 Professionals and shall include the following key components:

21                   (1) Integration of substance abuse treatment with justice system  
22 case processing;

23                   (2) Use of a nonadversarial approach in which prosecution and  
24 defense promote public safety while protecting the right of the accused to  
25 due process;

26                   (3) Early identification, with the use of a validated risk-needs  
27 assessment, of eligible moderate to high risk participants and prompt  
28 placement of eligible participants;

29                   (4) Access to a continuum of treatment, rehabilitation, and  
30 related services;

31                   (5) Frequent testing for alcohol and illicit drugs;

32                   (6) A coordinated strategy among the judge, prosecution,  
33 defense, and treatment providers to govern offender compliance;

34                   (7) Ongoing judicial interaction with each participant;

35                   (8) Monitoring and evaluation of the achievement of program  
36 goals and effectiveness;

1 (9) Continuing interdisciplinary education to promote effective  
2 planning, implementation, and operation; and

3 (10) Development of partnerships with public agencies and  
4 community-based organizations to generate local support and enhance drug  
5 court effectiveness.

6 (c)(1) Drug court programs are specialized court dockets within the  
7 existing structure of the Arkansas court system. Drug court programs offer  
8 judicial monitoring of intensive treatment and strict supervision of addicts  
9 in drug and drug-related cases.

10 (2) The creation of a drug court docket and the appointment of a  
11 circuit judge to that docket shall be approved by the administrative judge in  
12 each judicial circuit and made a part of the judicial circuit's  
13 administrative plan required by Supreme Court Administrative Order Number 14.

14 (d) Drug court program success shall be determined by the rate of  
15 recidivism of all drug court participants, including participants who do not  
16 graduate.

17  
18 SECTION 113. Arkansas Code § 16-98-303(b)(2), regarding what services  
19 the drug court program will incorporate from other state agencies, is amended  
20 to read as follows:

21 (2) Subject to an appropriation, funding, and position authorization,  
22 both programmatic and administrative, the Department of Community Correction  
23 shall:

24 (A) Provide positions for persons to serve as probation  
25 officers, drug counselors, and administrative assistants;

26 (B) Provide for drug testing for drug court program  
27 participants;

28 (C) Provide for intensive outpatient treatment for drug court  
29 program participants; ~~and~~

30 (D) Provide for intensive short-term and long-term residential  
31 treatment for drug court program participants; and

32 (E) Develop clinical assessment capacity, including drug  
33 testing, to identify participants with a substance addiction and develop a  
34 treatment protocol that improves the person's likelihood of success.

35  
36 SECTION 114. Arkansas Code § 16-98-303(b)(4), regarding what services

1 the Administrative Office of the Courts will provide to the drug court  
2 program, is amended to read as follows:

3 (4) Subject to an appropriation, funding, and position authorization,  
4 both programmatic and administrative, the Administrative Office of the Courts  
5 shall:

6 (A) Provide state-level coordination and support for drug court  
7 judges and their programs;

8 (B) Administer funds for the maintenance and operation of local  
9 drug court programs;

10 (C) Provide training and education to drug court judges and  
11 other professionals involved in drug court programs; ~~and~~

12 (D) Operate as a liaison between drug court judges and other  
13 state-level agencies providing services to drug court programs; ~~and~~

14 (E) Develop criteria for determining new drug court locations  
15 that take into account:

16 (1) The current size of the defendant population that  
17 meets the criteria for drug court participation;

18 (2) Recent trends indicating an increasing defendant  
19 population that meets the criteria for drug court participation;

20 (3) Existing drug treatment programs currently in place  
21 and operating through the courts, the county jail, or the Department of  
22 Correction; and

23 (4) The drug court program's use of evidence-based  
24 practices by key partners involved in the prospective drug court including  
25 those to assess the needs of drug court participants in order to effectively  
26 target programming toward high-risk participants.

27

28 SECTION 115. Arkansas Code § 16-98-303(c)(1), regarding who is not  
29 eligible for drug court, is amended to read as follows:

30 (c)(1) A drug court program shall not be available to any defendant  
31 who:

32 (A) Has a pending charge for a violent criminal charge  
33 felony against him or her; or

34 (B) Has been convicted of a violent felony offense as  
35 defined in this subchapter or adjudicated delinquent as a juvenile of a  
36 violent felony offense; or

1 (C)(i) Is required to register under the Sex Offender  
2 Registration Act of 1997, § 12-12-901 et seq.

3 (ii) The exclusion under subdivision (c)(1)(C)(i) of  
4 this section shall not apply to the offense of prostitution, § 5-70-102.

5  
6 SECTION 116. Arkansas Code § 16-98-306(a), regarding the collection of  
7 data for drug court programs, is amended to read as follows:

8 (a)(1) A drug court program shall collect and provide data on drug  
9 court applicants, ~~drug court participants, and the entire drug court program~~  
10 and all participants as required by the Division of Drug Court Programs  
11 within the Administrative Office of the Courts in accordance with the rules  
12 promulgated under § 16-98-307.

13 (2) The data shall include:

14 (A) The total number of applicants;

15 (B) The total number of participants;

16 (C) The total number of successful applicants;

17 (D) The total number of successful participants;

18 (E) The reason why each unsuccessful participant did not  
19 complete the program;

20 (F) Information about what happened to each unsuccessful  
21 participant;

22 (G) The total number of participants who were arrested for  
23 a new criminal offense while in the drug court program;

24 (H) The total number of participants who were convicted of  
25 a new criminal offense while in the drug court program;

26 (I) The total number of participants who committed a  
27 violation of one (1) or more conditions of the drug court program and the  
28 resulting sanction;

29 (J) The results of the initial risk-needs assessment  
30 review for each participant; and

31 (K) Any other data or information as required by the  
32 Division of Drug Court Programs within the Administrative Office of the  
33 Courts in accordance with the rules promulgated under § 16-98-307.

34  
35 SECTION 117. Arkansas Code Title 16 is amended to add a new chapter to  
36 read as follows:

1 Chapter 99 – Performance Incentive Funding For Recidivism and Crime  
2 Reduction

3 Subchapter 1 – Performance Incentive Act of 2011

4 16-99-101. Purpose and Intent.

5 (a) Both state and local agencies that implement criminal justice  
6 practices resulting in outcomes that reduce commitments to the Department of  
7 Correction should be rewarded.

8 (b) If a state agency, county, or judicial district has implemented  
9 proven risk-reduction strategies that reduce the number of offenders  
10 returning to the Department of Correction with no resultant increase in the  
11 crime rate; then, in order to reward the state agency, county, or judicial  
12 district and as an incentive to encourage similar practices elsewhere, the  
13 state agency, county, or judicial district should receive a monetary reward  
14 to continue those practices.

15 (c) The award would represent a portion of the monetary savings from  
16 the costs that would have been incurred had the state agency, county, or  
17 judicial district not reduced its impact on the Department of Correction.

18 (d) The goal of this chapter is to align state and local fiscal  
19 incentives by rewarding the Department of Community Correction, county  
20 governments, and judicial districts for each entity's role in reducing its  
21 impact on the Department of Correction.

22  
23 16-99-102. Program authorized – Administration.

24 (a) Costs averted due to a reduction in commitments to the Department  
25 of Correction or a reduction in the period of time served in the department,  
26 to the extent possible, shall be reinvested into those state agencies,  
27 counties, or judicial districts as an incentive to further the crime and  
28 recidivism reduction strategies being employed.

29 (b) The Department of Community Correction shall be the recipient of  
30 incentive funds upon meeting the requirements set out in this subchapter.

31 (c)(1) Counties, multicounty partnerships, and judicial districts  
32 shall be eligible to apply for participation in the performance incentive  
33 funding program set out in this subchapter on the reduction in the Department  
34 of Correction's population.

35 (2) Participation in the program will be determined through a  
36 competitive grant process.

1 (d) The Board of Corrections shall have the authority to manage the  
2 program and administer the grant funds to appropriate applicants and the  
3 Department of Community Correction.

4 (e)(1) Subject to the available funding, the Department of Community  
5 Corrections shall manage and administer grant funds to itself and counties,  
6 multi-county partnerships, and judicial districts in order to implement the  
7 policies and programs authorized by this program.

8 (2) These shall be one-time only grants not contingent on  
9 measured performance.

10 (3) All future funding under this section shall be tied to  
11 measured performance.

12  
13 16-99-103. Application.

14 (a)(1) The Department of Community Correction shall receive additional  
15 funding for committing to a reduction in the number of probation revocations  
16 that result from a technical violation or a new crime.

17 (2) The baseline for comparing probation revocation data shall  
18 be based on the number of probation revocations and expected length of stay.

19 (3) In order to qualify for the additional monetary incentives  
20 under this subchapter, the felony conviction rate for probationers must  
21 remain stable or decrease from the previous year.

22 (4) Each year the Department of Community Correction shall  
23 receive additional funds for reducing the net impact of revocations on the  
24 Department of Correction.

25 (5) The Department of Community Correction shall promulgate  
26 rules and regulations for the distribution and use of incentive funds that it  
27 receives, requiring that:

28 (A) No less than one-third (1/3) of the funds received  
29 each year are distributed to the individual probation or parole areas  
30 responsible for the revocation reductions while maintaining or improving  
31 public safety; and

32 (B) All of the funds received by the Department of  
33 Community Correction are invested in programs and practices designed to  
34 reduce recidivism.

35 (b)(1) A competitive grant process will distribute grants to five (5)  
36 individual counties, multicounty partnerships, or judicial districts that

1 meet criteria established to improve public safety and reduce their net  
2 impact on the Department of Correction.

3 (2) The Board of Corrections shall have the authority to:

4 (A) Manage the competitive grant process;

5 (B) Determine appropriate criteria;

6 (C) Award grants; and

7 (D) Collect and evaluate the data from all grantee sites.

8 (3) Applications can come from:

9 (A) Individual counties;

10 (B) Multicounty partnerships; or

11 (C) Judicial districts.

12 (4) Four (4) of the five (5) grants shall be awarded to the  
13 counties, multicounty partnerships, or judicial districts with the largest  
14 number of annual Department of Correction commitments that meet the program  
15 criteria and submit acceptable applications.

16 (5) One (1) grant shall be awarded to a county, multicounty  
17 partnership, or judicial district representing a rural region of the state,  
18 notwithstanding the number of Department of Correction commitments from the  
19 applicant so long as the program criteria are met and the application is  
20 acceptable.

21 (6) Each year, the grant recipient shall receive additional  
22 funds equal to one half (1/2) of the averted costs for reducing the net  
23 impact of its sentences on the Department of Correction.

24 (7) The baseline for comparing the net impact of sentences shall  
25 be based on the number of admissions and expected length of stay.

26 (8) In order to qualify for the additional monetary incentives  
27 under this subchapter, the net impact of the county's, and multicounty's,  
28 judicial district's above-guidelines sentences, based on admissions and  
29 expected length of stay, must remain stable or decrease from the previous  
30 year.

31 (9) The Board of Corrections shall promulgate rules and  
32 regulations for the distribution and use of incentive funds to successful  
33 applicants.

34  
35 16-99-104. Implementation.

36 The Board of Corrections shall:

1           (1) Establish rules and regulations for counties, multicounty  
2 partnerships, or judicial districts to apply for funds under this subchapter;

3           (2) Calculate and determine the baseline for the Department of  
4 Community Correction's revocation rate and for the Department of Correction's  
5 commitments' length of stay for evaluation purposes; and

6           (3) Calculate the averted costs to determine the amount to  
7 redirect to successful applicants who qualify for funds awarded under the  
8 performance incentive funding program.

9  
10       16-99-105. Reporting and data collection.

11       (a)(1) The Department of Community Correction shall provide data and  
12 information as requested by the Board of Corrections.

13       (2) That data and information shall include without limitation:

14           (A) The total number of probationers from each of the  
15 Department of Community Correction's individual probation or parole areas for  
16 the current year and previous years, as available;

17           (B) The total number of probation revocations, including  
18 revocations that result from violations and from new crimes for the current  
19 year and previous years, as available;

20           (C) The total number of new felony convictions and the  
21 rate of new felony convictions from each of the department's individual  
22 probation or parole areas for the current year and previous years, as  
23 available;

24           (D) The amount of grant funds distributed to each  
25 individual probation or parole areas; and

26           (E)(i) The evidence-based programs established or enhanced  
27 by the Department of Community Correction as part of its effort to reduce  
28 revocations and improve public safety; and

29           (ii) Any subsequent evidence-based programs that  
30 contribute to the outcomes of the performance incentive funding program under  
31 this subchapter.

32       (b) Each grantee shall provide data and information as requested by  
33 the Board of Corrections, including without limitation:

34           (1) The list of counties, if in a multicounty partnership,  
35 participating;

36           (2) The amount of grant funds distributed under this chapter to



1 each county, multicounty partnership, or judicial district; and

2 (3) The programs established or enhanced as part of each  
3 applicant's successful grant proposal and any subsequent evidence-based  
4 programs that contribute to the outcomes of the program under this chapter.

5 (c) The board shall report all data, findings, and recommendations  
6 annually for improvement to the:

7 (1) Governor;

8 (2) Chief Justice of the Supreme Court;

9 (3) Director of the Administrative Office of the Courts;

10 (4) Speaker of the House;

11 (5) President of the Senate;

12 (6) Chair of the House Judiciary Committee; and

13 (7) Chair of the Senate Judiciary Committee.

14 (d)(1) The board's report shall include an analysis of the impact of  
15 the performance incentive funding program.

16 (2) This analysis shall include without limitation the effect,  
17 compared to baseline, on net Department of Correction bed usage by the  
18 Department of Community Correction and by all county grantees, as well as  
19 Department of Correction admissions and length-of-stay, moneys paid out,  
20 revocation rates and new crime conviction rates for the Department of  
21 Community Correction, and guidelines compliance for participating counties.

22 (3) The board shall provide analyses on an area-by-area basis  
23 for the Department of Community Correction performance incentive funding  
24 program and on a county-by-county, multicounty partnership, or judicial  
25 district basis for the local performance incentive funding program.

26 (e) The board shall conduct a study and make recommendations, as  
27 needed, to those persons or entities listed in subsection (b) of this  
28 section, three (3) years after the implementation of the program established  
29 under this chapter and every third year thereafter to determine whether to  
30 change the baseline year that determines revocation reduction benchmarks.

31  
32 SECTION 118. Arkansas Code § 16-118-108(a), regarding those items  
33 defined as drug paraphernalia, is amended to read as follows:

34 (a) As used in this subchapter, "drug paraphernalia" means those items  
35 as defined by §§ 5-64-101, 5-64-403(a)(4), 5-64-443, and 5-64-505.

36

1 SECTION 119. Arkansas Code § 17-17-312(f)(28), regarding criminal  
2 background checks for auctioneers, 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 120. Arkansas Code § 17-27-313(e)(28), regarding criminal  
8 background checks for counselors, is amended to read as follows:

9 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
10 64-101 – ~~5-64-608~~ 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-  
11 64-419 – 5-64-442;

12  
13 SECTION 121. Arkansas Code § 17-87-312(e)(28), regarding criminal  
14 background checks for nurses, is amended to read as follows:

15 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
16 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
17 5-64-442;

18  
19 SECTION 122. Arkansas Code § 17-97-312(f)(28), regarding criminal  
20 background checks for psychologists and psychological examiners, is amended  
21 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 123. Arkansas Code § 17-103-307(f)(28), regarding criminal  
27 background checks for social workers, is amended to read as follows:

28 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
29 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
30 5-64-442;

31  
32 SECTION 124. Arkansas Code Title 19, Chapter 5, Subchapter 11 is  
33 amended to add a new section to read as follows:

34 19-5-1139. Best Practices Fund.

35 (a) There is created on the books of the Treasurer of State, the  
36 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to

1 be known as the "Best Practices Fund".

2 (b) The Best Practices Fund may consist of the proceeds from the  
3 payment of parole or probation supervision fees under § 16-93-104(a).

4 (c)(1) Expenditures from the Best Practices Fund shall be used to  
5 establish and maintain programs and services that implement practices that  
6 are proven to reduce the risk of having repeat offenders or recidivism,  
7 including programs that address treatment needs of offenders.

8 (2) Programs funded by the Best Practices Fund, whether provided  
9 by the Department of Correction, another state agency, or contracted with a  
10 private vendor, shall meet criteria promulgated in Department of Correction  
11 rules that establish evidence-based practices.

12 (3)(A) The funds deposited into the Best Practices Fund  
13 supplement and do not replace the state and local resources that are  
14 currently directed toward offender rehabilitation programs through the  
15 Department of Community Correction, the Department of Human Services, or any  
16 other state agency.

17 (B) Any expenditure from the General Fund or the Community  
18 Correction Revolving Fund shall not be reduced based on the availability of  
19 funds in the Best Practices Fund.

20  
21 SECTION 125. Arkansas Code § 20-13-1106(b)(28), regarding criminal  
22 background checks for emergency medical personnel, is amended to read as  
23 follows:

24 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
25 64-101 – 5-64-608, as prohibited in:

26 (A) The former § 5-64-401; and

27 (B) Sections 5-64-419 – 5-64-442;

28  
29 SECTION 126. Arkansas Code § 21-15-102(f)(28), regarding criminal  
30 background checks for public officers and employees who have direct contact  
31 with children and the mentally ill, is amended to read as follows:

32 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
33 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
34 5-64-442;

35  
36 SECTION 127. Arkansas Code § 21-15-103(g)(28), regarding criminal

1 background checks for public officers and employees, is amended to read as  
2 follows:

3 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
4 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
5 5-64-442;

6  
7 SECTION 128. The introductory language of Arkansas Code § 27-23-  
8 112(b)(7), regarding disqualification and cancellation for commercial  
9 driver's licenses, is amended to read as follows:

10 (7) If a driver operates a motor vehicle and is convicted of using the  
11 vehicle in the commission of a felony involving delivering, manufacturing,  
12 distributing, or dispensing or trafficking a controlled substance in  
13 violation of §§ 5-64-419 – 5-64-442 or the former § 5-64-401, the driver  
14 shall be disqualified as follows:

15  
16 SECTION 129. Arkansas Code § 27-23-128 is amended to read as follows:  
17 27-23-128. Deferment of sentence – Restrictions.

18 No circuit or district court judge may utilize ~~§ 5-4-311~~, § 5-4-321, §  
19 16-90-115, ~~or §§ 16-93-301 – 16-93-303~~, § 16-93-314, or § 27-50-701 or any  
20 other program to defer imposition of sentence in instances in which the  
21 defendant holds a commercial driver license and is charged with violating any  
22 state or local traffic law other than a parking violation.

23  
24 /s/Luker  
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