

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

A Bill

HOUSE BILL 1470

5 By: Representatives Williams, Baine
6

For An Act To Be Entitled

8 AN ACT TO ESTABLISH PRE-ADJUDICATION PROBATION
9 PROGRAMS; AND FOR OTHER PURPOSES.
10

Subtitle

11 TO ESTABLISH PRE-ADJUDICATION PROBATION
12 PROGRAMS.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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19 SECTION 1. Arkansas Code Title 5, Chapter 4 is amended to add a new
20 subchapter to read as follows:

21 Subchapter 9 - Sentencing Alternative - Pre-adjudication Probation

22 5-4-901. Legislative intent.

23 The intent of this act is to provide the judiciary with an additional
24 alternative to the disposition of criminal offenders that would assist the
25 offender in atoning for his or her criminal transgression and promote the
26 enforcement of the state's criminal statutes while easing the inmate burden
27 on the county jails and the Department of Correction.
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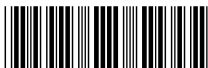
29 5-4-902. Definitions.

30 As used in this subchapter, "pre-adjudication" means the period of time
31 after:

32 (1) The prosecuting attorney files a criminal information or an
33 indictment is filed in circuit court;

34 (2) The person named in the criminal information or indictment is
35 arraigned on the charge in circuit court; and

36 (3) The person enters a plea of guilty but before the circuit court



1 enters a judgment and pronounces a sentence against the person.

2
3 5-4-903. Program authorized.

4 (a)(1) Each judicial district of this state may establish a pre-
5 adjudication probation program under this subchapter.

6 (2) The structure, method, and operation of the pre-adjudication
7 probation program may differ and shall be based upon the specific needs of
8 and resources available to the judicial district where the pre-adjudication
9 probation program is located.

10 (b)(1) A pre-adjudication probation program may incorporate services
11 from various state agencies, including without limitation the Department of
12 Community Correction and the Department of Human Services.

13 (2) Participating state agencies may provide:

14 (A) Persons to serve as pre-adjudication probation
15 officers, drug counselors, or other support staff;

16 (B) Drug testing and other substance-abuse facilities;

17 (C) Intensive short-term and long-term residential
18 treatment for participants in the pre-adjudication probation program who have
19 demonstrated a need for substance abuse treatment or other mental health-
20 related treatment; and

21 (D) Other personnel, support staff, or facilities that the
22 circuit court administering the pre-adjudication probation program finds
23 necessary or helpful.

24 (c) Subject to an appropriation, funding, and position authorization,
25 both programmatic and administrative, the Administrative Office of the Courts
26 shall:

27 (1) Provide state-level coordination and support for circuit
28 courts administering the pre-adjudication probation program;

29 (2) Administer funds for the maintenance and operation of local
30 pre-adjudication probation programs;

31 (3) Provide training and education to judges and other
32 professionals involved in pre-adjudication probation programs; and

33 (4) Operate as a liaison between judges and other state-level
34 agencies providing services to pre-adjudication probation programs.

35
36 5-4-904. Eligibility.

1 (a) The judicial district in which a person is charged with a felony
 2 shall have in place a pre-adjudication probation program as authorized by
 3 this subchapter before this subchapter may be utilized by the person charged
 4 with the felony, the circuit court with jurisdiction, or the state.

5 (b) A person charged with a felony is eligible to participate in a
 6 pre-adjudication probation program if:

7 (1) The circuit court with jurisdiction over the case and the
 8 prosecuting attorney agree; and

9 (2) The person is not charged with one (1) of the following
 10 criminal offenses:

11 (A) A criminal offense for which the person would be
 12 required to register as a sex offender under the Sex Offender Registration
 13 Act of 1997, § 12-12-901 et seq.;

14 (B) A felony involving violence as listed in § 5-4-
 15 501(d)(2);

16 (C) A felony involving a victim who was seventeen (17)
 17 years of age or younger at the time the felony was committed; or

18 (D) A felony involving a victim who was sixty-five (65)
 19 years of age or older at the time the felony was committed.

20
 21 5-4-905. Sanctions.

22 (a)(1) A pre-adjudication probation program judge may impose sanctions
 23 on a pre-adjudication probation program participant who fails to complete
 24 certain court-ordered pre-adjudication program requirements or meet certain
 25 court-ordered pre-adjudication program goals.

26 (2) Sanctions may include without limitation:

27 (A) Time spent in the custody of the county sheriff;

28 (B) Additional fines;

29 (C) Community service;

30 (D) Substance abuse testing;

31 (E) Written assignments; and

32 (F) Volunteer work for a nonprofit organization.

33 (b) The imposition of an additional sanction under this section:

34 (1) Is not an execution of a sentence resulting from a
 35 conviction for the criminal offense for which the participant has entered the
 36 pre-adjudication probation program; and

1 (2) Does not result by itself in the expulsion of the pre-
2 adjudication probation program participant from the pre-adjudication
3 probation program.

4
5 5-4-906. Record expungement upon completion.

6 (a) A pre-adjudication probation program judge, on his or her own
7 motion or upon a request from the participant in the pre-adjudication
8 probation program, shall order expungement and dismissal of a case if:

9 (1) The participant in the pre-adjudication probation program
10 has successfully completed a pre-adjudication probation program, as
11 determined by the pre-adjudication probation program judge;

12 (2) The pre-adjudication probation program judge has received a
13 recommendation from the prosecuting attorney for expungement and dismissal of
14 the case; and

15 (3) The pre-adjudication probation program judge, after
16 considering the past criminal history of the participant in the pre-
17 adjudication probation program, determines that expungement and dismissal of
18 the case is appropriate.

19 (b) Unless otherwise ordered by the pre-adjudication probation
20 program court, expungement under this section shall be as described in § 16-
21 90-901 et seq.

22
23 5-4-907. Cost, fees, and restitution.

24 (a) The pre-adjudication probation program judge may order the
25 offender to pay:

26 (1) Court costs as provided in § 16-10-305;

27 (2) Any substance abuse treatment costs;

28 (3) Drug testing costs;

29 (4) Costs associated with mental health treatment;

30 (5) A pre-adjudication probation program user fee;

31 (6) Any restitution owed the victim of the charged criminal
32 offense;

33 (7) Necessary supervision fees;

34 (8) Any applicable residential treatment fees; and

35 (9) Any fees determined or authorized under § 12-27-
36 125(b)(17)(B) or § 16-93-104(a)(1), which are to be paid to the Department of

1 Community Correction.

2 (b)(1) The pre-adjudication probation program judge shall establish a
3 schedule for the payment of costs, fees, and restitution.

4 (2) The cost for substance abuse treatment, mental health
5 treatment, drug testing, and supervision shall be set by the treatment and
6 supervision providers respectively and made part of the order of the pre-
7 adjudication probation program judge for payment.

8 (3) Pre-adjudication probation program user fees shall be set by
9 the pre-adjudication probation program judge.

10 (4) Treatment, drug testing, and supervision costs or fees shall
11 be paid to the respective providers.

12 (5) Fees determined or authorized under § 12-27-125(b)(17)(B) or
13 § 16-93-104(a)(1) shall be paid to the Department of Community Correction.

14 (6) Restitution to the victim shall be paid directly to the
15 victim.

16 (c) Court orders for costs, fees, and restitution shall remain an
17 obligation of the participant in the pre-adjudication probation program with
18 court monitoring until fully paid.

19
20 5-4-908. Program operation.

21 (a)(1) A pre-adjudication probation program may require a separate
22 judicial processing system differing in practice and design from the
23 traditional adversarial criminal prosecution and trial systems.

24 (2) A pre-adjudication probation program team shall be
25 designated by a circuit judge assigned to manage the pre-adjudication
26 probation program docket and may include a circuit judge, a prosecuting
27 attorney, a public defender or private defense attorney, one (1) or more
28 probation officers, and any other individual or individuals determined
29 necessary by the pre-adjudication probation program judge.

30 (3)(A) The administrative judge of the judicial district shall
31 designate one (1) or more circuit judges to administer the pre-adjudication
32 probation program.

33 (B) If a county is in a judicial district that does not
34 have a circuit judge who is able to administer the pre-adjudication probation
35 program on a consistent basis, the administrative plan for the judicial
36 circuit required by Administrative Order No. 14 of the Supreme Court may

1 designate a state district court judge to administer the pre-adjudication
2 probation program.

3 (b) Each judicial district may develop a training and implementation
4 manual for a pre-adjudication probation program with the assistance of the:

- 5 (1) Department of Human Services;
6 (2) Department of Education;
7 (3) Department of Career Education;
8 (4) Department of Community Correction; and
9 (5) Administrative Office of the Courts.

10
11 5-4-909. Administrative Office of the Courts.

12 The Administrative Office of the Courts shall:

13 (1) Serve as a coordinator between pre-adjudication probation
14 program judges, the Department of Community Correction, and other parties;

15 (2) Establish, manage, and maintain a uniform statewide pre-
16 adjudication probation program information system to track information and
17 data on pre-adjudication probation program participants;

18 (3) Train and educate pre-adjudication probation program judges
19 and pre-adjudication probation program staff in those judicial districts
20 maintaining a pre-adjudication probation program;

21 (4) Oversee the disbursement of funds appropriated to the
22 Administrative Office of the Courts for the maintenance and operation of
23 local pre-adjudication probation programs based on a formula developed by the
24 office; and

25 (5) Develop guidelines to serve as a framework for developing
26 effective local pre-adjudication probation programs and to provide a
27 structure for conducting research and evaluation for pre-adjudication
28 probation program accountability.

29
30 5-4-910. Disposition of court costs and user fees.

31 (a) All court costs and pre-adjudication probation program user fees
32 assessed by the pre-adjudication probation program judge shall be paid to the
33 circuit court clerk for remittance to the county treasury under § 14-14-1313.

34 (b) The county treasurer shall credit all court costs received under
35 this section to the county administration of justice fund to be distributed
36 under § 16-10-307.

1 (c) The county treasurer shall credit all pre-adjudication probation
2 program user fees received under this section to a fund known as the county
3 pre-adjudication probation program fund and appropriated by the quorum court
4 for the benefit and administration of the pre-adjudication probation program,
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6 5-4-911. Required resources.

7 Each pre-adjudication probation program established under this
8 subchapter, subject to an appropriation, funding, and position authorization,
9 both programmatic and administrative, shall be provided with the following
10 resources:

11 (1) The Department of Community Correction shall provide the following
12 pursuant to § 5-4-903 for adult offenders:

13 (A) A minimum of one (1) counselor position for every thirty
14 (30) pre-adjudication probation program participants;

15 (B) A minimum of one (1) probation officer position for every
16 forty (40) pre-adjudication probation program participants;

17 (C) A minimum of one (1) administrative assistant position for
18 each pre-adjudication probation program; and

19 (D) Drug screens and testing as needed.

20 (2) The Administrative Office of the Courts shall:

21 (A) Provide funding for additional ongoing maintenance and
22 operation costs of local pre-adjudication probation programs not provided by
23 the Department of Community Correction or the Department of Human Services,
24 including without limitation local pre-adjudication probation program
25 supplies, education, travel, and related expenses;

26 (B) Provide direct support to the pre-adjudication probation
27 program judge and pre-adjudication probation program;

28 (C) Provide coordination between the multidisciplinary team and
29 the pre-adjudication probation program judge;

30 (D) Provide case management;

31 (E) Monitor compliance of pre-adjudication probation program
32 participants with pre-adjudication probation program requirements; and

33 (F) Provide pre-adjudication probation program evaluation and
34 accountability.

35
36 5-4-912. Collection of data – Reporting requirement.

1 (a)(1) A pre-adjudication probation program shall collect and provide
2 data on pre-adjudication probation program applicants and all participants as
3 required by the Administrative Office of the Courts.

4 (2) Data collected under subdivision (a)(1) of this section
5 shall include:

6 (A) The total number of applicants;

7 (B) The total number of participants;

8 (C) The total number of successful applicants;

9 (D) The total number of successful participants;

10 (E) The reason why each unsuccessful participant did not
11 complete the pre-adjudication probation program;

12 (F) Information about what happened to each unsuccessful
13 participant;

14 (G) The total number of participants who were arrested for
15 a new criminal offense while in the pre-adjudication probation program;

16 (H) The total number of participants who were convicted of
17 a new criminal offense while in the pre-adjudication probation program;

18 (I) The total number of participants who committed a
19 violation of one (1) or more conditions of the pre-adjudication probation
20 program and the resulting sanction;

21 (J) The results of the initial risk-needs assessment
22 review for each participant;

23 (K) The race and gender of each applicant;

24 (L) The race and gender of each participant;

25 (M) The race and gender of each victim of an offense
26 committed by the applicant;

27 (N) The race and gender of each victim of an offense
28 committed by the participant; and

29 (O) Any other data or information as required by the
30 Administrative Office of the Courts.

31 (b) The data collected for evaluation purposes under subsection (a) of
32 this section shall:

33 (1) Include a minimum standard data set developed and specified
34 by the Administrative Office of the Courts; and

35 (2) Be maintained in the court files or be otherwise accessible
36 by the courts and the Administrative Office of the Courts.

1 (c)(1) After an individual is discharged either upon completion or
2 termination of a pre-adjudication probation program, the pre-adjudication
3 probation program as far as is practicable shall conduct follow-up contacts
4 with and reviews of former pre-adjudication probation program participants
5 for key outcome indicators of drug use, recidivism, and employment.

6 (2)(A) The follow-up contacts with and reviews of former pre-
7 adjudication probation program participants shall be conducted as frequently
8 and for a period of time as determined by the Administrative Office of the
9 Courts based upon the nature of the pre-adjudication probation program and
10 the nature of the participants.

11 (B) The follow-up contacts with and reviews of former pre-
12 adjudication probation program participants are not extensions of the pre-
13 adjudication probation program court's jurisdiction over the pre-adjudication
14 probation program participants.

15 (d) For purposes of standardized measurement of success of pre-
16 adjudication probation programs across the state, the Administrative Office
17 of the Courts in consultation with other state agencies shall adopt an
18 operational definition of terms to be used in any evaluation and report of
19 pre-adjudication probation programs such as:

- 20 (1) "Incentives given";
- 21 (2) "Recidivism";
- 22 (3) "Retention";
- 23 (4) "Relapses";
- 24 (5) "Restarts"; and
- 25 (6) "Sanctions imposed".

26 (e) Each pre-adjudication probation program shall provide all
27 information requested by the Administrative Office of the Courts.

28 (f) The Administrative Office of the Courts, the Department of
29 Community Correction, the Office of Alcohol and Drug Abuse Prevention, and
30 the Arkansas Crime Information Center shall work together to share and make
31 available data to provide a comprehensive data management system for the
32 state's pre-adjudication probation programs.

33 (g)(1) The Administrative Office of the Courts shall:

34 (A) Develop a statewide evaluation model for pre-
35 adjudication probation programs; and

36 (B) Conduct ongoing evaluations of the effectiveness and

1 efficiency of all pre-adjudication probation programs.

2 (2) The Administrative Office of the Courts shall submit to the
3 General Assembly by July 1 of each year a report of the evaluations under
4 subdivision (g)(1) of this section

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