

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

As Engrossed: S2/26/13

A Bill

SENATE BILL 178

5 By: Senator D. Johnson
6 By: Representatives Vines, Williams
7

For An Act To Be Entitled

9 AN ACT TO MAKE TECHNICAL CORRECTIONS TO TITLE 5,
10 CONCERNING CRIMINAL LAW, OF THE ARKANSAS CODE; AND
11 FOR OTHER PURPOSES.
12
13

Subtitle

15 TO MAKE TECHNICAL CORRECTIONS TO TITLE 5,
16 CONCERNING CRIMINAL LAW, OF THE ARKANSAS
17 CODE.
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19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 5-2-316(a)(1) is amended to read as follows
23 to clarify its application:

24 (a)(1) The Director of the Department of Human Services or his or her
25 designee, or a person conditionally released under § 5-2-315, or both, may
26 apply to the court ordering the conditional release for discharge from or
27 modification of the order granting conditional release on the ground that ~~he~~
28 ~~or she~~ the person conditionally released under § 5-2-315 may be discharged or
29 the order modified without danger to ~~himself or herself~~ the person
30 conditionally released under § 5-2-315 or to the person or property of
31 another person.
32

33 SECTION 2. Arkansas Code § 5-4-802 is amended to read as follows to
34 clarify its application:

35 5-4-802. Rules.

36 The Board of Corrections shall promulgate necessary rules to be



1 followed by a government entity in the supervision of eligible offenders
2 ~~utilized~~ sentenced under this subchapter.

3
4 SECTION 3. Arkansas Code § 5-4-803(b)(2) is amended to read as follows
5 to clarify its application:

6 (2) In order for the eligible offender to participate in a community
7 work project, space must be available in the county jail or regional jail as
8 certified by the county sheriff, to the:

9 (A) Department of Correction for an eligible offender committed
10 to the department, ~~;~~ ~~or to the court~~

11 (B) Court for an eligible offender serving time for a misdemeanor
12 offense.

13
14 SECTION 4. Arkansas Code § 5-5-204(a)(1) is amended to read as follows
15 to clarify its application:

16 (a)(1)(A) Upon conviction and a hearing, when the circuit court having
17 jurisdiction over the conveyance seized finds ~~upon a hearing~~ by a
18 preponderance of the evidence that a ground for a forfeiture exists under
19 this subchapter, the circuit court may enter an order to sell the conveyance,
20 ~~with the proceeds, after~~

21 (B) After allowance for reasonable expenses of seizure and
22 maintenance of custody of the conveyance, the proceeds from a sale under
23 subdivision (a)(1)(A) of this section going shall be used to satisfy any
24 outstanding restitution under § 5-4-205 owed to a victim of an offense for
25 which the conveyance was used, if the victim files a petition with the
26 circuit court or makes a request to the circuit court within thirty (30) days
27 of the filing of the judgment and commitment order of the convicted
28 defendant.

29
30 SECTION 5. Arkansas Code § 5-14-129(a)(2) and (b) are amended to read
31 as follows to use consistent terms and to make stylistic changes:

32 (2) Accept work as a self-employed person, an independent
33 contractor, or an employee or agent of a self-employed person or independent
34 contractor that is to be performed at a ~~private~~ privately owned daycare
35 facility when the privately owned daycare facility has in its care a child.

36 (b) ~~A sex offender who is required to register under the Sex Offender~~

1 ~~Registration Act of 1997, § 12-12-901 et seq., and who knowingly violates~~
2 ~~this section is guilty of A violation of this section is a Class D felony.~~

3
4 SECTION 6. Arkansas Code § 5-14-202(d) is repealed because § 12-12-107
5 requiring human immunodeficiency virus (HIV) testing was not enacted, making
6 the subsection obsolete.

7 ~~(d) For medical records of testing done under § 12-12-107, the~~
8 ~~prosecuting attorney shall:~~

9 ~~(1) Be notified of any human immunodeficiency virus (HIV)~~
10 ~~testing done under § 12-12-107;~~

11 ~~(2) Be given a copy of the results of the human immunodeficiency~~
12 ~~virus (HIV) test; and~~

13 ~~(3) Notify the victim, his or her parent or parents or guardian~~
14 ~~if the victim is a minor, and the defendant of the results of the human~~
15 ~~immunodeficiency virus (HIV) test as soon as is practicable.~~

16
17 SECTION 7. Arkansas Code § 5-36-103(b)(3)(F) is amended to read as
18 follows to add clarifying language:

19 (F) ~~An~~ The property is an electric power line, gas line, water line,
20 wire or fiber insulator, electric motor, or other similar apparatus connected
21 to a farm shop, on-farm grain drying and storage complex, heating and cooling
22 system, environmental control system, animal production facility, irrigation
23 system, or dwelling; or

24
25 SECTION 8. Arkansas Code § 5-36-124(c) is amended to read as follows
26 to clarify its application:

27 (c)~~(1)~~ Theft by receiving of scrap metal is a:

28 ~~(A) Class D felony if the value of the scrap metal is~~
29 ~~more than one thousand dollars (\$1,000); or~~

30 ~~(B) Class A misdemeanor.~~

31 (1) Class A misdemeanor; or

32 (2) Class D felony if it is a second or subsequent offense of
33 theft by receiving of scrap metal or the value of the scrap metal is more
34 than one thousand dollars (\$1,000).

35 ~~(2) A person who is found guilty of or pleads guilty or nolo~~
36 ~~contendere to a second or subsequent violation of this section is guilty of a~~

1 ~~Class D felony.~~

2
3 SECTION 9. Arkansas Code § 5-37-226(b)(1)(B) is amended to read as
4 follows to clarify its application:

5 (B) A Except as provided under subdivision (b)(2) of this section, a
6 person who has a previous conviction under ~~subdivision (b)(1)(A) of this~~
7 section upon conviction is guilty of a Class D felony for a subsequent
8 violation of subsection (a) of this section.

9
10 SECTION 10. Arkansas Code § 5-37-304(b) and (c) are amended to read as
11 follows to add clarifying language:

12 (b)(1) ~~Nothing impairs the A prosecuting attorney's power to~~
13 immediately attorney may file charges immediately after the check, draft,
14 order, or other form of presentment involving the transmission of account
15 information has been returned.

16 (2) The prosecuting attorney may collect restitution, including
17 a service charge, not exceeding thirty dollars (\$30.00) per check, draft,
18 order, or other form of presentment involving the transmission of account
19 information plus the amount of any fees charged to the holder of the check,
20 draft, order, or other form of presentment involving the transmission of
21 account information by a financial institution as a result of the check's,
22 draft's, order's, or other forms of presentment involving the transmission of
23 account information not being honored, for the payees of the check, draft,
24 order, or other form of presentment involving the transmission of account
25 information.

26 (c) The check, draft, ~~or~~ order, or other form of presentment involving
27 the transmission of account information bearing an "insufficient" stamp or
28 "no account" stamp from the collecting bank or any other report or stamp from
29 the collecting bank indicating that the check, draft, order, or other form of
30 presentment involving the transmission of account information was dishonored
31 or unable to be paid due to insufficient funds on deposit to cover the value
32 of the check, draft, order, or other form of presentment involving the
33 transmission of account information shall be received as evidence that there
34 *were insufficient funds or no account at trial in any court in this state.*

35
36 SECTION 11. Arkansas Code § 5-37-305(b)(4) and (5), concerning the

1 penalties for worthless checks, is amended to read as follows:

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

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

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

11 ~~(5)(4)~~ Under subdivisions (b)(1)(B), ~~and~~ (b)(2)(B), ~~and~~ (b)(3)(B) of
12 this section, each instrument or transaction may be added together in a
13 single prosecution.

14
15 SECTION 12. Arkansas Code § 5-64-405(e)(4) is amended to read as
16 follows to add clarifying language:

17 (4) Have the execution of the sentence deferred;

18
19 SECTION 13. Arkansas Code § 5-64-441(b)(1) is amended to read as
20 follows to add clarifying language:

21 (1) A Schedule I or Schedule II controlled substance upon conviction
22 is guilty of a Class D felony;

23
24 SECTION 14. Arkansas Code § 5-64-442(b)(3) is amended to read as
25 follows to add clarifying language:

26 (3) A counterfeit substance purporting to be a Schedule ~~IV-VI~~ IV,
27 Schedule V, or Schedule VI controlled substance or that is not classified as
28 a scheduled controlled substance upon conviction is guilty of a Class A
29 misdemeanor.

30
31 SECTION 15. Arkansas Code § 5-64-1103(c)(1)(A) is amended to read as
32 follows to clarify a term:

33 (c)(1)(A) Except under a valid prescription, before dispensing a
34 product containing ephedrine, pseudoephedrine, or phenylpropanolamine that is
35 not exempt under subdivision (b)(1) or (b)(2) of this section, a pharmacist
36 shall make a professional determination, based on a pharmacist-patient

1 relationship, as to whether or not there is a legitimate medical and
2 pharmaceutical need for the ~~drug product containing ephedrine,~~
3 pseudoephedrine, or phenylpropanolamine.
4

5 SECTION 16. Arkansas Code § 5-64-1113(a) is amended to read as follows
6 to add clarifying language:

7 (a) The Arkansas State Board of Pharmacy may adopt rules creating and
8 adding to a list of additional nonprescription drugs that are subject to the
9 same restrictions as are imposed for ephedrine, pseudoephedrine, or
10 phenylpropanolamine under §§ 5-64-1103(c) and (d)(4) and § 5-64-1104.
11

12 SECTION 17. Arkansas Code § 5-71-230(b)(2) is amended to read as
13 follows to correct a culpable mental state:

14 (2) ~~Intends~~ Has a purpose to interfere with the funeral; and
15

16 SECTION 18. Arkansas Code § 5-73-124(a)(1) is amended to read as
17 follows to add clarifying language:

18 (a)(1) Except as otherwise provided in this section, any person who
19 knowingly carries or has in his or her possession any tear gas or pepper
20 spray in any form, or any person who knowingly carries or has in his or her
21 possession any gun, bomb, grenade, cartridge, or other weapon designed for
22 the discharge of tear gas or pepper spray, upon conviction is guilty of a
23 Class A misdemeanor.
24

25 SECTION 19. Arkansas Code § 5-73-124(b)(1) is amended to read as
26 follows to clarify a term for consistency with the Arkansas Criminal Code:

27 (b)(1) ~~Peace~~ Law enforcement officer while engaged in the discharge of
28 his or her official duties; or
29

30 SECTION 20. Arkansas Code § 5-78-102(b) is amended to read as follows
31 to clarify its application:

32 (b) If a minor who is found by a court to be in violation of any
33 criminal statute is also found to ~~be~~ have been in possession of a cigarette
34 or tobacco product at the time of the violation of the criminal statute, the
35 court may order the minor to perform up to three (3) hours of community
36 service and to enroll in a tobacco education program, in addition to any

1 other punishment imposed by the court for the violation of the criminal
2 statute.

3
4 SECTION 21. DO NOT CODIFY. The enactment and adoption of this act
5 shall not repeal, expressly or impliedly, the acts passed at the regular
6 session of the Eighty-Ninth General Assembly. All such acts shall have the
7 full force and effect and, so far as those acts intentionally vary from or
8 conflict with any provision contained in this act, those acts shall have the
9 effect of subsequent acts and as amending or repealing the appropriate parts
10 of the Arkansas Code of 1987.

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12 /s/D. Johnson
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