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A Bill

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SENATE BILL 485

By: Senators C. Tucker, Gilmore

By: Representatives Gazaway, Dalby

For An Act To Be Entitled

AN ACT TO REDUCE RECIDIVISM; TO AMEND THE LAW
CONCERNING THE SUSPENDED IMPOSITION OF A SENTENCE,
PROBATION, PAROLE, AND POST-RELEASE SUPERVISION; AND
FOR OTHER PURPOSES.

Subtitle

TO REDUCE RECIDIVISM; AND TO AMEND THE
LAW CONCERNING THE SUSPENDED IMPOSITION
OF A SENTENCE, PROBATION, PAROLE, AND
POST-RELEASE SUPERVISION.

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

*SECTION 1. Arkansas Code § 5-4-101, concerning definitions with
respect to the disposition of offenders, is amended to add an additional
subdivision to read as follows:*

*(8) "Criminogenic" means those factors which are static and
dynamic personal and situational characteristics that increase the risk of
criminality and reoffending.*

*SECTION 2. Arkansas Code § 5-4-303(a), concerning the requirements
that a court shall attach as conditions of the suspension of a sentence or
probation, is amended to read as follows:*

*(a)(1) If a court suspends imposition of sentence on a defendant or
places him or her on probation, the court shall attach such conditions as are
reasonably necessary to assist the defendant in leading a law-abiding life.*

(2) Conditions attached by the court shall be narrowly tailored:



1 (A) To account for the rehabilitation of the defendant and
2 for public safety; and

3 (B) To the criminogenic risks and needs of the defendant.

4 (3)(A) If a presentence investigation has been conducted under §
5 5-4-102, the court shall take into consideration the findings of the
6 presentence investigation when determining the conditions of the defendant's
7 probation.

8 (B) If the court does not order a presentence
9 investigation, the court shall rely on all available information before the
10 court in determining the conditions of probation.

11
12 SECTION 3. Arkansas Code § 5-4-303(c), concerning the requirements
13 that a court may attach as conditions of the suspension of a sentence or
14 probation, is amended to read as follows:

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

18 (1) Support his or her dependents and meet his or her family
19 responsibilities;

20 (2) Undergo available medical or psychiatric treatment and enter
21 and remain in a specified institution when required for medical or
22 psychiatric treatment;

23 (3) Participate in a community-based rehabilitative program or
24 work-release program that uses practices proven to reduce recidivism and for
25 which the court may impose a reasonable fee or assessment on the defendant to
26 be used in support of the community-based rehabilitative program or work-
27 release program;

28 (4)(A) Refrain from frequenting an unlawful or designated place
29 or consorting with a designated person.

30 (B) A designated person may be a specific individual or a
31 specific class of persons, but only when reasons for such designation are set
32 forth in the order;

33 (5) Have no firearm in his or her possession;

34 (6) Make restitution to an aggrieved party in an amount the
35 defendant can afford to pay for the actual loss or damage caused by his or
36 her offense;

1 (7) Post a bond, with or without surety, conditioned on the
2 performance of a prescribed condition; and

3 (8) Satisfy any other condition reasonably related to the
4 rehabilitation of the defendant and not unduly restrictive of his or her
5 liberty or incompatible with his or her freedom of conscience.

6
7 SECTION 4. Arkansas Code § 5-4-306 is amended to read as follows:
8 5-4-306. Time period generally.

9 If a court suspends imposition of sentence on a defendant or places him
10 or her on probation, the period of suspension or probation shall be for a
11 definite period of time not to exceed the maximum jail or prison sentence
12 allowable for the offense charged taking into account the recommended periods
13 of suspension or probation as adopted by the Arkansas Sentencing Commission.

14
15 SECTION 5. Arkansas Code § 12-27-103(b)(18), concerning the functions,
16 power, and duties of the Division of Correction, is amended to read as
17 follows:

18 (18) The Department of Corrections shall establish the Evidence-
19 based Practices and Quality Assurance Unit that conducts programs of
20 research, evaluation, statistics, audit, and planning, including studies and
21 evaluation of the performance of various functions and activities of the
22 department and studies affecting the treatment of offenders and information
23 about other programs; and

24
25 SECTION 6. Arkansas Code § 12-27-126(d), concerning the duties of the
26 Director of the Division of Community Correction, is amended to read as
27 follows:

28 (d) Subject to the rules, policies, and procedures prescribed by the
29 Board of Corrections, the director shall:

30 (1) Administer the Division of Community Correction and
31 supervise the administration of all facilities, programs, and services under
32 the Division of Community Correction's jurisdiction;

33 (2) Employ such personnel as are required in the administration
34 of the provisions of this ~~act~~ subchapter, provided that the employment of
35 personnel shall be in accordance with the applicable laws and personnel rules
36 of the state;

1 (3) Institute programs for the training and development of
2 personnel within the Division of Community Correction and have authority to
3 suspend, discharge, or otherwise discipline personnel in accordance with
4 policies prescribed by the Board of Corrections;

5 (4) Make an annual report to the Board of Corrections, which
6 will be forwarded to the Governor and the General Assembly, on the work of
7 the Division of Community Correction, including statistics and other data,
8 income derived from fee collection, a summary of expenditures of the Division
9 of Community Correction, and progress reports regarding internal issues such
10 as offender success, programming development, bed space utilization, and
11 future needs; ~~and~~

12 (5) Cooperate with the Division of Correction, the Post-Prison
13 Transfer Board, the Arkansas Sentencing Commission, judicial districts,
14 counties, and municipalities to provide the guidance and services required to
15 ensure a full range of correctional and community correction options for the
16 state as a whole; and

17 (6) In consultation with the Evidence-based Practices and
18 Quality Assurance Unit, develop a system for evaluating and promoting a
19 community supervision officer based on dimensions that include without
20 limitation the community supervision officer's ability to:

21 (A) Accurately complete risk and needs assessments;

22 (B) Develop evidence-based supervision case plans based on
23 the results of the risk and needs assessment; and

24 (C) Engage and encourage a person to participate in the
25 rehabilitation-oriented case plan and to change his or her behaviors.

26
27 SECTION 7. Arkansas Code § 12-27-127(a), concerning the transfer of an
28 inmate to the Division of Community Correction, is amended to add an
29 additional subdivision to read as follows:

30 (3) When the committing court designates that a statutorily
31 eligible inmate may not be administratively transferred to a community
32 correction center, the committing court shall include in the sentencing order
33 under subdivision (a)(2) of this section a written explanation of how the
34 committing court determined that the inmate should not be administratively
35 transferred.

1 SECTION 8. Arkansas Code § 12-29-112, concerning the discharge or
2 release of an inmate from a state facility, is amended to add additional
3 subsections to read as follows:

4 (f) To the extent that an inmate is engaging in prosocial activities
5 while incarcerated, the inmate's reentry plan shall prioritize the
6 continuation of those activities, including without limitation continued
7 employment and continued participation in mental health treatment or
8 substance abuse treatment, or both.

9 (g) As used in this section, "prosocial" means positive behaviors,
10 activities, efforts, and attitudes that, according to current research,
11 encourage an individual to adhere to societal norms and avoid criminal
12 behavior.

13
14 SECTION 9. Arkansas Code § 16-10-103, concerning the training and
15 education of court personnel, is amended to add an additional subsection to
16 read as follows:

17 (c) The Administrative Office of the Courts shall consult with the
18 Department of Corrections to develop training and judicial education on the
19 use of evidence-based practices to reduce recidivism, including without
20 limitation the use of risk and needs assessment tools.

21
22 SECTION 10. Arkansas Code § 16-13-703(c)(2), concerning imprisonment
23 credit for a period of imprisonment for nonpayment of a fine, is amended to
24 read as follows:

25 (2)(A) The period of imprisonment shall not exceed one (1) day
26 for each ~~forty dollars (\$40.00)~~ one hundred dollars (\$100) of the fine,
27 thirty (30) days if the fine was imposed upon conviction of a misdemeanor, or
28 one (1) year if the fine was imposed upon conviction of a felony, whichever
29 is the shorter period.

30 (B)(i) ~~The~~ For a defendant who was eligible to be
31 represented by a public defender, the total amount of fines owed shall not
32 automatically be reduced by the period of imprisonment, but the court may
33 with a credit ~~forty dollars (\$40.00)~~ of one hundred dollars (\$100) for each
34 day of imprisonment against the total fine, excluding any amount owed for
35 restitution, the defendant has been sentenced to pay.

36 (ii) A defendant who was not eligible to be

1 represented by a public defender may petition the court for the relief
2 provided under subdivision (c)(2)(B)(i) of this section.

3
4 SECTION 11. Arkansas Code § 16-90-102, concerning presentence officers
5 appointed by the judicial district to prepare presentence reports, is amended
6 to add an additional subsection to read as follows:

7 (d) Notwithstanding subsections (a) through (c) of this section and
8 subject to funding by the General Assembly, the Administrative Office of the
9 Courts shall develop a pilot program to expand the number of presentence
10 officers dedicated to preparing presentence reports with a validated risk and
11 needs assessment component.

12
13 SECTION 12. Arkansas Code § 16-90-802(d)(1), concerning the powers and
14 duties of the Arkansas Sentencing Commission, is amended to read as follows:

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 before
18 January 1, 1994.

19 (B) The commission shall also set:

20 (i) the The percentage of time within parameters set
21 by law to be served for offenses at each seriousness level before any type of
22 transfer or release; and

23 (ii) Guidelines for presumptive periods of
24 suspension or probation;

25
26 SECTION 13. Arkansas Code § 16-90-802(d)(11), concerning the powers
27 and duties of the Arkansas Sentencing Commission, is amended to read as
28 follows:

29 (11) Coordinate with the Director of the Arkansas Sentencing
30 Commission, the Division of Correction, and the Division of Community
31 Correction to develop policy to ensure that the intake process ~~best utilizes~~
32 maximizes the use of beds in nontraditional correctional facilities,
33 including without limitation community correction centers, work release
34 centers, and reentry facilities; and

35
36 SECTION 14. Arkansas Code § 16-90-1304(b), concerning the application

1 of earned discharge and completion of sentence, is amended to read as
2 follows:

3 (b)(1) ~~No less~~ If the Division of Community Correction proposes to
4 discharge the sentence of a person under community supervision under this
5 subchapter, no fewer than forty-five (45) days before the discharge date, the
6 ~~Division of Community Correction~~ division shall submit notice to:

7 (A) The prosecuting attorney; and

8 (B) The Post-Prison Transfer Board.

9 (2)(A) Within thirty (30) days of receipt of the earned
10 discharge notice under subdivision (b)(1) of this section, the prosecuting
11 attorney or the board may submit to the division ~~in writing~~ any reasonable
12 objection to early discharge under this subchapter warranting the forfeiture
13 of earned-discharge credit.

14 (B) An objection submitted under subdivision (b)(2)(A) of
15 this section shall be in writing and state the reason for the objection.

16 (3) If an objection under subdivision (b)(2) of this section is
17 lodged, the division shall immediately suspend the discharge of the sentence.

18 (4) The parolee or probationer may file a petition for review in
19 the sentencing court.

20 (5) A review shall be conducted in the sentencing court within
21 fourteen (14) days of the filing of the petition.

22 (6)(A) The sentencing court shall consider the objections
23 against the person based solely on the information contained in the petition.

24 (B) The sentencing court shall determine, based on a
25 preponderance of the evidence, whether the person should not be discharged
26 from the sentence because, if the information contained in the petition had
27 been known to the division, the division would have ordered the forfeiture of
28 any of the discharge credit earned to that point or if insufficient evidence
29 exists that would warrant the forfeiture of discharge credit.

30 (C) If the sentencing court finds sufficient evidence
31 warranting a forfeiture of discharge credits, the division shall make the
32 necessary forfeiture of earned discharge credit appropriate for the type of
33 misconduct asserted in the objection.

34 (D)(i) If the sentencing court does not find sufficient
35 evidence exists that warrants forfeiture of discharge credits, the division
36 shall discharge the person immediately if the date upon which the completion

1 of the sentence occurred has passed.

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

5
6 SECTION 15. Arkansas Code § 16-93-101, concerning definitions with
7 respect to probation and parole, is amended to add additional subdivisions to
8 read as follows:

9 (16) "Criminogenic" means those factors which are static and
10 dynamic personal and situational characteristics that increase the risk of
11 criminality and reoffending; and

12 (17) "Prosocial" means positive behaviors, activities, efforts,
13 and attitudes that, according to current research, encourage an individual to
14 adhere to societal norms and avoid criminal behavior.

15
16 SECTION 16. Arkansas Code § 16-93-306(c), concerning probation
17 supervision generally, is amended to read as follows:

18 (c)(1) The Division of Community Correction shall allocate resources,
19 including the assignment of probation officers, to focus on moderate-risk and
20 high-risk offenders as determined by the actuarial assessment provided in
21 subdivision (b)(6) of this section.

22 (2) The Division of Community Correction shall require public
23 and private treatment and service providers that receive state funds for the
24 treatment of or service for probationers to use evidence-based programs and
25 practices.

26 (3) The Department of Corrections shall:

27 (A) Develop a process for annually evaluating each
28 provider under subdivision (c)(2) of this section; and

29 (B) Establish a clear policy disqualifying a noncompliant
30 provider from receiving public funds until the provider demonstrates the
31 ability to comply with the requirements of subdivision (c)(2) of this
32 section.

33 (4) In addition to the requirements in § 12-27-104, the Board of
34 Corrections shall include in its annual report the results of annual
35 evaluations under subdivision (c)(3)(A) of this section, listing each
36 provider determined to be noncompliant.

1 (5) The Division of Community Correction shall develop a
2 feedback system that routinely provides the Division of Community Correction
3 with process and aggregated outcome data.

4
5 SECTION 17. Arkansas Code § 16-93-306(d)(2), concerning
6 administrative sanctions while on probation supervision, is amended to read
7 as follows:

8 (2)(A) The Division of Community Correction shall develop an
9 ~~intermediate~~ incentives and sanctions procedure and grid to guide a probation
10 officer in determining the appropriate response to prosocial behavior or a
11 violation of conditions of supervision.

12 (B) ~~Intermediate sanctions~~ Sanctions administered by the
13 Division of Community Correction are required to conform to the incentives
14 and sanctioning grid.

15 (C) The ~~intermediate~~ incentives and sanctioning grid shall
16 include:

17 (i) An assignment of point values to commonly
18 occurring violations of terms of probation or criminal behavior;

19 (ii) An assignment of point values to and suitable
20 rewards for behaviors that demonstrate prosocial effort or decrease the
21 likelihood of recidivism, including without limitation:

22 (a) Education;

23 (b) Workforce development;

24 (c) Community service; ~~and~~

25 (d) Behavioral health programming; and

26 (e) Prosocial activity;

27 (iii) Details on the mechanisms by which points are
28 accumulated and reduced; ~~and~~

29 (iv) Guidance on which ~~intermediate~~ sanctions should
30 be applied at which point thresholds;

31 (v) Rewards that are attainable and meaningful at
32 each risk level to motivate individuals throughout stages of supervision,
33 including without limitation achieving individualized goals, milestones, and
34 accomplishments; and

35 (vi) Guidance on the appropriate motivational ratio
36 of rewards to sanctions.

1
2 SECTION 18. Arkansas Code § 16-93-712(a), concerning parole
3 supervision, is amended to read as follows:

4 (a)(1) The Post-Prison Transfer Board shall establish written policies
5 and procedures governing the supervision of parolees designed to enhance
6 public safety and to assist the parolees in reintegrating into society.

7 (2)(A) The supervision of parolees shall be based on evidence-
8 based practices based on current research, including a validated risk-needs
9 assessment.

10 (B) Decisions shall target the parolee's criminal risk
11 factors with appropriate supervision and treatment designed to reduce the
12 likelihood of reoffense.

13 (C) Conditions of supervision shall be narrowly tailored
14 to:

15 (i) Account for the rehabilitation of the parolee
16 and for public safety; and

17 (ii) The criminogenic risks and needs of the
18 individual parolee.

19
20 SECTION 19. Arkansas Code § 16-93-712(c), concerning the services
21 provided to people under parole supervision, is amended to add an additional
22 subdivision to read as follows:

23 (3) The Department of Corrections shall:

24 (A) Develop a process for annually evaluating each
25 provider under subdivision (c)(2) of this section; and

26 (B) Establish a clear policy disqualifying a noncompliant
27 provider from receiving public funds until the provider demonstrates the
28 ability to comply with the requirements under subdivision (c)(2) of this
29 section.

30 (4) In addition to the requirements in § 12-27-104, the Board of
31 Corrections shall include in the annual report the results of annual
32 evaluations under subdivision (c)(3)(A) of this section, listing each
33 provider determined to be noncompliant.

34
35 SECTION 20. Arkansas Code § 16-93-712(d)(2), concerning administrative
36 sanctions while on parole, is amended to read as follows:

1 (2)(A)(i) The Division of Community Correction shall develop an
2 ~~intermediate incentives and~~ sanctions procedure and grid to guide a community
3 supervision officer in determining the appropriate response to prosocial
4 behaviors or a violation of conditions of supervision.

5 (ii) The ~~intermediate incentives and~~ sanctions
6 procedure shall include a requirement that the community supervision officer
7 consider multiple factors when determining the sanction to be imposed,
8 including risk level, previous violations and sanctions, and the severity of
9 the current and prior violation.

10 (B) ~~Intermediate Incentives and~~ sanctions administered by
11 the Division of Community Correction are required to conform to the
12 incentives and sanctioning grid.

13 (C) The ~~intermediate incentives and~~ sanctioning grid shall
14 include:

15 (i) An assignment of point values to commonly
16 occurring violations of terms of parole or criminal behavior;

17 (ii) An assignment of point values to and suitable
18 rewards for behaviors that demonstrate prosocial effort or decrease the
19 likelihood of recidivism, including without limitation:

20 (a) Education;

21 (b) Workforce development;

22 (c) Community service; ~~and~~

23 (d) Behavioral health programming; and

24 (e) Prosocial activity;

25 (iii) Details on the mechanisms by which points are
26 accumulated and reduced; ~~and~~

27 (iv) Guidance on which ~~intermediate~~ sanctions should
28 be applied at which point thresholds;

29 (v) Rewards that are attainable and meaningful at
30 each risk level to encourage individuals throughout the stages of
31 supervision, including without limitation achieving individualized goals,
32 milestones, and accomplishments; and

33 (vi) Guidance on the appropriate motivational ratio
34 of rewards to sanctions.

35
36 SECTION 21. Arkansas Code § 16-93-1202(6), concerning the definition

1 of "eligibility" or "eligible offender" with respect to community correction,
2 is amended to read as follows:

3 (6) "Eligibility" or "eligible offender" means any person
4 convicted of a felony who is by law eligible for such sentence or who is
5 otherwise under the supervision of the Division of Community Correction ~~and~~
6 who:

7 (A) ~~who falls~~ Falls within the population targeted by the
8 General Assembly for inclusion in community correction facilities;

9 (B) ~~and who has~~ Has not been subject to a disciplinary
10 violation for a violent act or for sexual misconduct while in the custody of
11 a jail or correctional facility; and

12 (C) ~~does~~ Does not have a current or previous conviction
13 for a violent or sexual offense listed under subdivision (10)(A)(ii) of this
14 section unless the previous conviction:

15 (i) Was more than five (5) years before the instant
16 offense; and

17 (ii) Resulted in a sentence that has expired;

18
19 SECTION 22. Arkansas Code § 16-93-1906(a)(3), concerning post-release
20 supervision, is amended to add an additional subdivision to read as follows:

21 (C) Conditions of post-release supervision shall be
22 narrowly tailored to:

23 (i) Account for the rehabilitation of the offender
24 and for public safety; and

25 (ii) The criminogenic risks and needs of the
26 offender.

27
28 SECTION 23. Arkansas Code § 16-93-1906(c), concerning the services
29 provided people who are under post-release supervision, is amended to add
30 additional subdivisions to read as follows:

31 (3) The Department of Corrections shall:

32 (A) Develop a process for annually evaluating each
33 provider under subdivision (c)(2) of this section; and

34 (B) Establish a clear policy disqualifying a noncompliant
35 provider from receiving public funds until the provider demonstrates the
36 ability to comply with the requirements of subdivision (c)(2) of this

1 section.

2 (4) In addition to the requirements in § 12-27-104, the Board of
3 Corrections shall include in the annual report the results of annual
4 evaluations under subdivision (c)(3)(A) of this section, listing each
5 provider determined to be noncompliant.

6
7 SECTION 24. Arkansas Code § 16-93-1907(a)(2), concerning
8 administrative sanctions while on post-release supervision, is amended to
9 read as follows:

10 (2)(A) The Division of Community Correction shall develop an
11 ~~intermediate~~ incentives and sanctions procedure and an ~~intermediate~~
12 incentives and sanctions grid to guide a community supervision officer in
13 determining the appropriate response to prosocial behavior or a violation of
14 the conditions of supervision.

15 (B) ~~Intermediate~~ Incentives and sanctions administered by
16 the Division of Community Correction shall conform to the ~~intermediate~~
17 incentives and sanctions grid.

18 (C) The ~~intermediate~~ incentives and sanctions grid shall
19 include:

20 (i) An assignment of point values to commonly
21 occurring violations of terms of post-release supervision or criminal
22 behavior;

23 (ii) An assignment of point values to and suitable
24 rewards for behaviors that demonstrate prosocial effort or decrease the
25 likelihood of recidivism including without limitation:

26 (a) Education;

27 (b) Workforce development;

28 (c) Community service; ~~and~~

29 (d) Behavioral health programming; and

30 (e) Prosocial activity;

31 (iii) Details on the mechanisms by which points are
32 accumulated and reduced; ~~and~~

33 (iv) Guidance on which ~~intermediate~~ sanctions should
34 be applied at which ~~points~~ point thresholds;

35 (v) Rewards that are attainable and meaningful at
36 each risk level to encourage individuals throughout the stages of

supervision, including without limitation achieving individualized goals,
milestones, and accomplishments; and

(vi) Guidance on the appropriate motivational ratio
of rewards to sanctions.

/s/C. Tucker