

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

# A Bill

DRAFT BPG/BPG  
SENATE BILL

5 By: Senators Luker, Bookout, Files, Whitaker  
6 By: Representatives Moore, Williams, Tyler, Webb  
7

## For An Act To Be Entitled

8 AN ACT TO BE KNOWN AS THE PUBLIC SAFETY IMPROVEMENT  
9 ACT; AND FOR OTHER PURPOSES.  
10

### Subtitle

11 TO IMPROVE PUBLIC SAFETY AND SLOW  
12 CORRECTIONS GROWTH.  
13

14  
15  
16  
17  
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
19

20 SECTION 1. DO NOT CODIFY. Legislative intent.

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

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

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

30 (2) The Department of Community Correction will:

31 (A)Both:

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

36 (ii) Review individual cases and practices.

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

3                   (i) The types of criminal convictions for which  
 4 restitution is ordered;

5                   (ii) How frequently restitution orders are issued;

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

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

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

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

15                   (vii) How each court prioritizes the collection of  
 16 the various financial obligations of offenders;

17                   (C) Examine by judicial district the data collected under  
 18 this section; and

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

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

26  
 27                   SECTION 3. Arkansas Code § 5-4-104(d)(2), regarding authorized  
 28 sentences, is amended to read as follows:

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

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

34                   (2) Probation as authorized by §§ 5-4-301 – 5-4-310 and 16-93-  
 35 314;

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

- 1 (4) Restitution as authorized by a provision of § 5-4-205; or
- 2 (5) Imprisonment and payment of a fine.

3

4 SECTION 4. Arkansas Code § 5-4-104(e)(1)(B), regarding authorized

5 sentences, is amended to read as follows:

6 (B)(i) In any other case, the court may suspend imposition of sentence

7 or place the defendant on probation, in accordance with §§ 5-4-301 – ~~5-4-311~~

8 5-4-310 and 16-93-314, except as otherwise specifically prohibited by

9 statute.

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

11

12 SECTION 5. Arkansas Code § 5-4-105(a)(1), regarding expungement and

13 sealing options, is amended to read as follows:

14 (1) If no judgment of guilt is entered as a consequence of a plea of

15 guilty or nolo contendere, eligibility for an expungement or a sealing of the

16 records of the criminal prosecution is governed by § 5-4-311, § 5-64-413, ~~or~~

17 § 16-90-1301 et seq., §§ 16-93-301 – 16-93-303, or § 16-93-314; and

18

19 SECTION 6. Arkansas Code § 5-4-301(d)(2), regarding the imposition of

20 a sentence, is amended to read as follows:

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

22 (A) The modification of the original order suspending the

23 imposition of sentence on a defendant or placing a defendant on probation

24 following a revocation hearing held pursuant to ~~§ 5-4-310~~ § 16-93-307; and

25 (B) A modification set within the limits of ~~§§ 5-4-303, 5-4-304,~~

26 ~~and 5-4-306~~ § 16-93-309 and § 16-93-312.

27

28 SECTION 7. Arkansas Code § 5-4-303 is amended to read as follows:

29 5-4-303. Conditions of suspension or probation.

30 (a) If a court suspends imposition of sentence on a defendant or

31 places him or her on probation, the court shall attach such conditions as are

32 reasonably necessary to assist the defendant in leading a law-abiding life.

33 (b) The court shall provide as an express condition of every

34 suspension or probation that the defendant not commit an offense punishable

35 by imprisonment during the period of suspension or probation.

36 (c) If the court suspends imposition of sentence on a defendant or

1 places him or her on probation, as a condition of its order the court may  
2 require that the defendant:

3 (1) Support his or her dependents and meet his or her family  
4 responsibilities;

5 (2) Work faithfully at suitable employment;

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

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

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

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

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

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

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

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

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

30 ~~(1) Continue the period of suspension of 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 within the limits set by § 5-~~  
36 ~~4-304; or~~

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

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

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

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

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

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

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

17                   ~~(2) Sentencing the defendant to incarceration in the Department~~  
18 ~~of Correction.~~

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

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

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

30                           ~~(i)(A)~~ Whether restitution shall be total or  
31 partial;

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

34                           ~~(iii)(C)~~ If a personal service is contemplated, the  
35 reasonable value and rate of compensation for the personal service rendered  
36 to the victim.

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

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

7                   ~~(B) Either:~~

8                           ~~(i) Extend the probation period as the court deems~~  
 9 ~~necessary; or~~

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

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

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

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

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

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

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

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

34                   (C) The commission shall deposit the money collected into  
 35 a separate account within the State Central Services Fund to be known as  
 36 "Public Defender Attorney Fees" to be used solely to defray costs for the

1 commission.

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

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

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

8

9 SECTION 8. Arkansas Code § 5-4-304 is amended to read as follows:

10 5-4-304. Confinement as condition of suspension or probation.

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

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

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

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

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

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

35 (B) In the case of confinement to a facility in the  
 36 Department of Community Correction, the period actually spent in confinement

1 under this section shall not exceed three hundred sixty-five (365) days.

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

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

8  
9 SECTION 9. Arkansas Code § 5-4-306 is amended to read as follows:

10 5-4-306. Time period generally —~~Modification.~~

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

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

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

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

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

20 ~~(3) Impose an additional fine authorized by §§ 5-4-201 and 5-4-~~  
21 ~~303; or~~

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

23  
24 SECTION 10. Arkansas Code § 5-4-308 is repealed.

25 ~~5-4-308. Transfer of jurisdiction.~~

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

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

35 ~~(c) The procedure under this section may be repeated if a defendant~~  
36 ~~goes from the county where he or she is being supervised to another county~~



1 ~~during the period of his or her probation.~~

2  
3 SECTION 11. Arkansas Code § 5-4-309 is repealed.

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

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

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

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

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

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

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

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

28 ~~(1) The defendant is arrested for violation of suspension or~~  
29 ~~probation;~~

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

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

35 ~~(4) The defendant has been;~~

36 ~~(A) Issued a citation in lieu of arrest under Rule 5 of~~

1 ~~the Arkansas Rules of Criminal Procedure for violation of suspension or~~  
 2 ~~probation; or~~

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

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

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

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

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

19  
 20 SECTION 12. Arkansas Code § 5-4-310 is repealed.

21 ~~5-4-310. Revocation hearings.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           ~~(A) Time and place of the revocation hearing;~~

26           ~~(B) Purpose of the revocation hearing; and~~

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

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

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

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

33           ~~(C) Be represented by counsel.~~

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

1           ~~(c) At a preliminary hearing pursuant to subsection (a) of this~~  
 2 ~~section or a revocation hearing pursuant to subsection (b) of this section.~~

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

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

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

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

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

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

19  
 20          SECTION 13. Arkansas Code § 5-4-311 is repealed.

21          ~~5-4-311. Discharge and dismissal.~~

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

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

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

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

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

35  
 36          SECTION 14. Arkansas Code § 5-4-323(c) is repealed.

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

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

8  
 9           SECTION 15. Arkansas Code § 5-4-323(d), regarding a good faith effort  
 10 for education or employment, is amended to read as follows:

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

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

16                   (2) Is registered for employment and enrolled and participating  
 17 in an ~~employment training~~ employment-training program with the purpose of  
 18 obtaining gainful employment.

19  
 20           SECTION 16. Arkansas Code § 5-4-323(e), regarding a person's failure  
 21 to to make a good faith effort to comply with a court order, is amended to  
 22 read as follows:

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

28  
 29           SECTION 17. Arkansas Code Title 5, Chapter 4, Subchapter 3 is amended  
 30 to add new sections to read as follows:

31           5-4-312. Presentence investigation – Placement in a community  
 32 corrections program.

33           (a)(1) A court may require that either a presentence investigation be  
 34 conducted by either the probation officer or presentence investigation  
 35 officer assigned to the court or that the defense counsel of a defendant, the  
 36 prosecuting authority, a probation officer, and other persons whom the court

1 believes have information relevant to the sentencing of the defendant submit  
2 to the court the information in writing for the sentencing phase of trial.

3 (2) The presentence investigation or information submitted by  
4 the persons described in subdivision (a)(1) of this section shall be  
5 forwarded with the commitment order to the circuit clerk and retained in the  
6 defendant's case file.

7 (b) Upon determination by a court that a defendant is an eligible  
8 offender and that placement in a community correction program under § 16-93-  
9 1201 et seq. is proper, the court may:

10 (1)(A) Suspend the imposition of the sentence or place the  
11 defendant on probation, under § 5-4-104, § 5-4-201 et seq., §§ 5-4-301 – 5-4-  
12 307, and § 16-93-314.

13 (B) A sentence under subdivision (b)(1)(A) of this section  
14 may be accompanied by assignment to a community correction program under §  
15 16-93-1201 et seq. for a designated period of time commensurate with the  
16 goals of the community correction program assignment and the rules  
17 established by the Board of Corrections for the operation of community  
18 correction programs.

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

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

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

34 (iii) If the defendant is committed to the  
35 Department of Correction under subdivision (b)(1)(D)(i) of this section, 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 a commitment to  
 2 the Department of Correction; or

3 (2)(A) Commit the defendant to the custody of the Department of  
 4 Correction for judicial transfer to the Department of Community Correction  
 5 subject to the following:

6 (i) That the sentence imposed provides that the  
 7 defendant 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 facility is conditioned upon the defendant's continuing  
 12 eligibility for Department of Community Correction placement and the  
 13 defendant's compliance with all applicable rules established by the board for  
 14 community correction programs.

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

17 (c) A defendant may not be excluded from placement in a community  
 18 correction program based solely on the defendant's inability to speak, read,  
 19 write, hear, or understand English.

20  
 21 5-4-313. Placement in a drug treatment program – Drug court  
 22 alternative.

23 If a judicial district has one (1) or more of the following programs in  
 24 place at the time of a defendant's sentencing for a felony, a court may  
 25 sentence the defendant to:

26 (1) A posttrial treatment program for drug abuse under § 16-98-  
 27 201; or

28 (2) Drug court under the Arkansas Drug Court Act, § 16-98-301 et  
 29 seq.

30  
 31 SECTION 18. Arkansas Code § 5-4-402(c), regarding the imprisonment of  
 32 felony offenders, is amended to read as follows:

33 (c) Except as provided in § 5-4-304 or § 16-93-708, a defendant  
 34 convicted of a felony violation of § ~~5-64-401~~ § 5-64-419 – § 5-64-432 shall  
 35 be committed to the custody of the Department of Correction for the term of  
 36 his or her sentence or until released in accordance with law.

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

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

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

13 (B) Without eligibility for parole or community correction  
14 transfer except under ~~§ 16-93-1302~~ § 16-93-711.

15  
16 SECTION 20. The introductory language of Arkansas Code § 5-4-  
17 501(d)(1), regarding the sentencing of habitual offenders, is amended to read  
18 as follows:

19 (d)(1) A defendant who is convicted of a felony involving violence  
20 enumerated in subdivision (d)(2) of this section and who previously has  
21 ~~previously~~ been convicted of two (2) or more of the felonies involving  
22 violence enumerated in subdivision (d)(2) of this section may be sentenced to  
23 pay any fine authorized by law for the felony involving violence conviction  
24 and shall be sentenced to an extended term of imprisonment without  
25 eligibility for parole or community correction transfer except under ~~§ 16-93-~~  
26 ~~1302~~ § 16-93-711 as follows:

27  
28 SECTION 21. Arkansas Code Title 5, Chapter 4 is amended to create a  
29 new subchapter to read as follows:

30 Subchapter 8 – Sentencing Alternative - Community Service Work

31 5-4-801. Definitions.

32 As used in this subchapter:

33 (1) “Community work project” means any program in which an eligible  
34 offender in a county jail is allowed to work under the supervision of a  
35 government entity on projects on public lands, public buildings, public  
36 roads, public parks, and public rights-of-way designed to benefit the



1 government entity supervising the eligible offender;

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

4 (A) Capital murder, § 5-10-101;

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

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

7 (D) Manslaughter, § 5-10-104;

8 (E) Rape, § 5-14-103;

9 (F) Kidnapping, § 5-11-102;

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

11 (H) Driving while intoxicated, second or subsequent offense, §  
12 5-65-103;

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

14 (J) Trafficking a controlled substance, § 5-64-430;

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

19  
20 5-4-802. Rules.

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

24  
25 5-4-803. Procedure.

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

27 (b)(1) If a court elects to sentence an eligible offender under this  
28 subchapter, the court may suspend imposition of sentence for the eligible  
29 offender for a period not to exceed the period of years that is the maximum  
30 penalty for the offense for which convicted upon condition that the eligible  
31 offender be incarcerated in a county jail or regional jail to participate in  
32 a community work project.

33 (2) In order for the eligible offender to participate in a  
34 community work project, space must be available in the county jail or  
35 regional jail as certified by the county sheriff to the Department of  
36 Correction for an eligible offender committed to the department or to the

1 court for an eligible offender serving time for a misdemeanor offense.

2 (3) The length of the community work project service and  
3 incarceration shall not exceed eighteen (18) months for a felony offense with  
4 work incentive credit or, in the case of a misdemeanor offense, the maximum  
5 length of incarceration for the misdemeanor offense reduced by the work  
6 incentive credit.

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

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

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

13 (2) If the court finds that the eligible offender has withdrawn  
14 consent to participate in the community work project, the court shall remand  
15 the eligible offender for the remaining portion of the eligible offender's  
16 sentence to the:

17 (A) Department for a felony offense; or

18 (B) County sheriff for a misdemeanor offense.

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

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

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

30 (2) A hearing under this subsection shall follow the same format  
31 and accord the eligible offender the same safeguards as the revocation  
32 procedure in § 16-93-307.

33 (3) The burden of proof necessary for revocation of a sentence  
34 under this subchapter shall be a preponderance of the evidence that the  
35 eligible offender's conduct has been unsatisfactory while participating in a  
36 community work project.

1           (4) If the court finds that the eligible offender's conduct has  
 2 been unsatisfactory while performing in a community work project, the court  
 3 shall remand the eligible offender for the remaining portion of the eligible  
 4 offender's sentence to the:

5                   (A) Department for a felony offense; or

6                   (B) County sheriff for a misdemeanor offense.

7           (5) If an eligible offender's conduct is found to be  
 8 unsatisfactory, the eligible offender is entitled to all good time and parole  
 9 eligibility considerations as provided by law.

10  
 11           5-4-804. Medical treatment and costs.

12           The state is responsible for the cost of medical treatment of an  
 13 eligible offender sentenced to a felony under this subchapter if the medical  
 14 treatment is for:

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

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

21                   (B) The Department of Correction may transfer an eligible  
 22 offender committed to a county jail or regional jail under this subchapter to  
 23 a medical facility or treatment facility it deems appropriate for the medical  
 24 treatment.

25  
 26           5-4-805. Reimbursement for housing eligible offenders.

27           The state shall reimburse a county for housing an eligible offender  
 28 convicted of a felony offense and sentenced under this subchapter at a rate  
 29 to be determined by the Board of Corrections.

30  
 31           SECTION 22. Arkansas Code § 5-10-101(c), regarding the disposition of  
 32 the offense of capital murder, is amended to read as follows:

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

35           (2) For any purpose other than disposition under §§ 5-4-101 – 5-4-104,  
 36 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-

1 4-404, 5-4-501 – 5-4-504, 5-4-601 – 5-4-605, 5-4-607, ~~and 5-4-608~~, 16-93-307,  
 2 16-93-313, and 16-93-314 capital murder is a Class Y felony.

3  
 4 SECTION 23. Arkansas Code § 5-36-103 is amended to read as follows:  
 5 5-36-103. Theft of property.

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

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

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

12 (b) Theft of property is a:

13 (1) Class B felony if:

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

16 (B) The property is obtained by the threat of serious  
 17 physical injury to any person or destruction of the occupiable structure of  
 18 another person;

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

22 (D) The property is:

23 (i) Anhydrous ammonia in any form; or

24 (ii) A product containing any percentage of  
 25 anhydrous ammonia in any form;

26 ~~(E)(i) The property is building material obtained from a~~  
 27 ~~permitted construction site and the value of the building material is five~~  
 28 ~~hundred dollars (\$500) or more.~~

29 ~~(ii) As used in subdivision (b)(1)(E)(i) of this~~  
 30 ~~section:~~

31 ~~(a) “Building material” means lumber, a~~  
 32 ~~construction tool, a window, a door, copper tubing or wire, or any other~~  
 33 ~~material or good used in the construction or rebuilding of a building or a~~  
 34 ~~structure; and~~

35 ~~(b) “Permitted construction site” means the~~  
 36 ~~site of construction, alteration, painting, or repair of a building or a~~

1 ~~structure for which a building permit has been issued by a city of the first~~  
 2 ~~class, a city of the second class, an incorporated town, or a county; or~~  
 3 ~~(F) The value of the property is five hundred dollars~~  
 4 ~~(\$500) or more and the theft occurred in an area declared to be under a state~~  
 5 ~~of emergency pursuant to proclamation by the President of the United States,~~  
 6 ~~the Governor, or the executive officer of a city or county;~~

7 (2) Class C felony if:

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

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

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

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

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

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

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

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

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

27 (ii) As used in subdivision (b)(2)(D)(i) of this  
 28 section:

29 (a) "Building material" means lumber, a  
 30 construction tool, a window, a door, copper tubing or wire, or any other  
 31 material or good used in the construction or rebuilding of a building or a  
 32 structure; and

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

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

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

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

9                   ~~(ii)~~ The property was unlawfully obtained during a  
 10 criminal episode.

11                   ~~(B)~~ As used in subdivision (b)(3)(A)(ii) of this section,  
 12 “criminal episode” means a series of thefts committed by the same person on  
 13 three (3) or more occasions within three (3) days; or

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

16                   (C) The property is a:

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

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

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

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

26                   (4) Class A misdemeanor if:

27                   (A) The value of the property is ~~five hundred dollars~~  
 28 ~~(\$500)~~ one thousand dollars (\$1,000) or less; or

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

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

1 (A) A generator intended for use by:  
 2 (i) A public facility;  
 3 (ii) A nursing home or hospital;  
 4 (iii) An airport;  
 5 (iv) A public safety device;  
 6 (v) A communication tower or facility;  
 7 (vi) A public utility;  
 8 (vii) A water system or sewer system;  
 9 (viii) A public safety agency; or  
 10 (ix) Any other facility or use providing a vital  
 11 service; or

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

14 (2) As used in this subsection:

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

17 (i) Firefighting and rescue;  
 18 (ii) Natural or man-caused disaster or major  
 19 emergency response;

20 (iii) Law enforcement; or  
 21 (iv) Ambulance or emergency medical services; and

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

24 (3) The penalty is enhanced as follows:

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

27 (ii) The fine is mandatory; and

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

30

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

33 (c) Theft of services is a:

34 (1) Class B felony if:

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

1 (B) The service is obtained by the threat of serious  
 2 physical injury to any person or destruction of the occupiable structure of  
 3 another person;

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

7 (D) The theft of services involves a theft of a utility  
 8 service that results in:

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

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

13 (2) Class C felony if:

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

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

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

20 ~~(3)~~(4) Class A misdemeanor if the theft of services+

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

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

26  
 27 SECTION 25. Arkansas Code § 5-36-106(e), regarding the threshold theft  
 28 amounts for theft by receiving, is amended to read as follows:

29 (e) Theft by receiving is a:

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

32 (2) Class C felony if the value of the property is less than  
 33 twenty-five thousand dollars (\$25,000) but more than five thousand dollars  
 34 (\$5,000);

35 ~~(2)~~(3) Class C Class D felony if:

36 (A) The value of the property is ~~less than two thousand~~



1 ~~five hundred dollars (\$2,500)~~ five thousand dollars (\$5,000) or less but more  
 2 than ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000);

3 (B) The property is a:

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

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

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

8 ~~(3)~~(4) Class A misdemeanor if otherwise committed.

9  
 10 SECTION 26. Arkansas Code § 5-36-303 is amended to read as follows:

11 5-36-303. Theft of wireless service.

12 (a) A person commits the offense of theft of wireless service if he or  
 13 she ~~intentionally~~ purposely obtains wireless service by the use of an  
 14 unlawful wireless device or without the consent of the wireless service  
 15 provider.

16 (b) Theft of wireless service is a:

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

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

21 (A) Aggregate value of wireless service obtained is ~~more~~  
 22 ~~than five hundred dollars (\$500)~~ five thousand dollars (\$5,000) or less but  
 23 ~~less more than two thousand five hundred dollars (\$2500)~~ one thousand dollars  
 24 (\$1,000); or

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

28 (i) Place another person in reasonable apprehension  
 29 of physical injury to himself or herself or another person or of damage to  
 30 his or her property or to the property of another person; or

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

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

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

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

1 (C) Person convicted of the offense has been previously  
 2 convicted of any similar crime in this or any other state or federal  
 3 jurisdiction; or

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

6  
 7 SECTION 27. Arkansas Code § 5-37-207(b), regarding threshold amounts  
 8 for fraudulent use of a credit card or debit card, is amended to read as  
 9 follows:

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

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

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

15 (1) Class B felony if the value of all moneys, goods, or  
 16 services obtained during any six-month period is twenty five thousand dollars  
 17 (\$25,000) or more;

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

21 (3) Class D felony if the value of all moneys, goods, or  
 22 services obtained during any six-month period is five thousand dollars  
 23 (\$5,000) or less but more than one thousand dollars (\$1,000); or

24 (4) Class A misdemeanor if the value of all moneys, goods, or  
 25 services obtained during any six-month period is one thousand dollars  
 26 (\$1,000) or less.

27  
 28 SECTION 28. Arkansas Code § 5-37-305 is amended to read as follows:  
 29 5-37-305. Penalties.

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

34 ~~(1) First Offense. A For a first offense, the person is guilty~~  
 35 of an unclassified misdemeanor and shall receive a fine of not less than  
 36 fifty dollars (\$50.00) nor more than five hundred dollars (\$500) or

1 imprisonment in the county jail or regional detention facility not to exceed  
2 thirty (30) days, or both;

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

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

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

16 (A) The amount of any one (1) instrument or transaction is  
17 ~~two thousand five hundred dollars (\$2,500)~~ twenty-five thousand dollars  
18 (\$25,000) or more; or

19 (B) More than one (1) instrument or transaction has been  
20 drawn within a ninety-day period, ~~and each period,~~ each instrument or  
21 transaction is in an amount less than ~~two thousand five hundred dollars~~  
22 ~~(\$2,500)~~ twenty-five thousand dollars (\$25,000), and the total amount of all  
23 such instruments or transactions is ~~two thousand five hundred dollars~~  
24 ~~(\$2,500)~~ twenty-five thousand dollars (\$25,000) or more.

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

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

32 (B) More than one (1) instrument or transaction has been  
33 drawn within a ninety-day period, each instrument or transaction is in an  
34 amount less than ~~five hundred dollars (\$500)~~ twenty-five thousand dollars  
35 (\$25,000) but more than five thousand dollars (\$5,000), and the total amount  
36 of all such instruments or transactions is less than ~~two thousand five~~

1 ~~hundred dollars (\$2,500)~~ twenty-five thousand dollars (\$25,000) but more than  
 2 ~~five hundred dollars (\$500)~~ five thousand dollars (\$5,000).

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

6 (A) The amount of any one (1) instrument or transaction is  
 7 five thousand dollars (\$5,000) or less but more than one thousand dollars  
 8 (\$1,000); or

9 (B) More than one (1) instrument or transaction has been  
 10 drawn within a ninety-day period, each instrument or transaction is in an  
 11 amount of five thousand dollars (\$5,000) or less but more than one thousand  
 12 dollars (\$1,000), and the total amount of all such instruments or  
 13 transactions is five thousand dollars (\$5,000) or less but more than one  
 14 thousand dollars (\$1,000).

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

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

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

24 ~~(3)~~(5) Under subdivisions (b)(1)(B) and (b)(2)(B) of this  
 25 section, each instrument or transaction may be added together in a single  
 26 prosecution.

27 (c)(1) Any court passing sentence upon a person convicted of any  
 28 offense, ~~pursuant to a provision of~~ under §§ 5-37-301 – 5-37-306, may also  
 29 order the person to make full restitution to the plaintiff or complaining  
 30 party.

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

32  
 33 SECTION 29. Arkansas Code § 5-38-203(b), regarding threshold amounts  
 34 for first-degree criminal mischief, is amended to read as follows:

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

36 (1) ~~Class C felony~~ Class A misdemeanor if the amount of actual

1 damage is ~~five hundred dollars (\$500)~~ one thousand dollars (\$1,000) or less  
2 ~~or more; or~~

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

6 (3) Class C felony if the amount of actual damage is more than  
7 five thousand dollars (\$5,000) but less than twenty-five thousand dollars  
8 (\$25,000); or

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

11  
12 SECTION 30. Arkansas Code § 5-38-204(b), regarding threshold amounts  
13 for second-degree criminal mischief, is amended to read as follows:

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

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

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

21 (3) Class B misdemeanor if otherwise committed.

22  
23 SECTION 31. Arkansas Code § 5-51-201(d), regarding the disposition of  
24 the crime of treason, is amended as follows:

25 (d) For all purposes other than disposition under §§ 5-4-101 – 5-4-  
26 104, 5-4-201 – 5-4-204, 5-4-301 – ~~5-4-309~~ 5-4-307, ~~5-4-311~~, 5-4-401 – 5-4-  
27 404, 5-4-501 – 5-4-504, 5-4-601 – 5-4-605, 5-4-607, ~~and~~ 5-4-608, 16-93-307,  
28 16-93-313, and 16-93-314, treason is a Class A felony.

29  
30 SECTION 32. Arkansas Code § 5-54-120(d), regarding the charge of  
31 failure to appear, is amended as follows:

32 (d) This section does not apply to an order to appear imposed as a  
33 condition of suspension or probation ~~pursuant to~~ under § 5-4-303 or an order  
34 to appear issued prior to a revocation hearing ~~pursuant to § 5-4-310~~ under §  
35 16-93-307.

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

2 ~~5-64-401. Criminal penalties.~~

3 ~~(a) Controlled Substance—Manufacturing, Delivering, or Possessing~~  
4 ~~with Intent to Manufacture or Deliver.—Except as authorized by subchapters~~  
5 ~~1-6 of this chapter, it is unlawful for any person to manufacture, deliver,~~  
6 ~~or possess with intent to manufacture or deliver a controlled substance. Any~~  
7 ~~person who violates this subsection with respect to:~~

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

9 ~~(A)(i) A controlled substance classified in Schedule I or~~  
10 ~~Schedule II that is a narcotic drug or methamphetamine, and by aggregate~~  
11 ~~weight, including an adulterant or diluent, is less than twenty-eight grams~~  
12 ~~(28 g), is guilty of a felony and shall be imprisoned for not less than ten~~  
13 ~~(10) years nor more than forty (40) years, or life, and shall be fined an~~  
14 ~~amount not exceeding twenty-five thousand dollars (\$25,000).~~

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

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

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

26 ~~(C)(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 two hundred grams (200 g) or~~  
29 ~~more but less than four hundred grams (400 g), is guilty of a felony and~~  
30 ~~shall be imprisoned for not less than twenty (20) years nor more than forty~~  
31 ~~(40) years, or life, and shall be fined an amount not exceeding one hundred~~  
32 ~~thousand dollars (\$100,000).~~

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

35 ~~(D)(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 four hundred grams (400 g) or~~  
2 ~~more, is guilty of a felony and shall be imprisoned for not less than forty~~  
3 ~~(40) years, or life, and shall be fined an amount not exceeding two hundred~~  
4 ~~and fifty thousand dollars (\$250,000).~~

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

7 ~~(2) Other Schedule I, II, or III.~~

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

14 ~~(ii) For any purpose other than disposition, this~~  
15 ~~offense is a Class B felony.~~

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

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

24 ~~(C)(i) Any other controlled substance classified in~~  
25 ~~Schedule I, Schedule II, or Schedule III that by aggregate weight, including~~  
26 ~~an adulterant or diluent, is four hundred grams (400 g) or more, is guilty of~~  
27 ~~a felony and shall be imprisoned for not less than fifteen (15) years nor~~  
28 ~~more than forty (40) years, or life, and shall be fined an amount not~~  
29 ~~exceeding one hundred thousand dollars (\$100,000).~~

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

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

33 ~~(A)(i) A substance classified in Schedule IV or Schedule V~~  
34 ~~that by aggregate weight, including an adulterant or diluent, is less than~~  
35 ~~two hundred grams (200 g), is guilty of a felony and shall be imprisoned for~~  
36 ~~not less than three (3) years nor more than ten (10) years and shall be fined~~

1 ~~an amount not exceeding ten thousand dollars (\$10,000).~~

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

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

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

12 ~~(C)(i) A substance classified in Schedule IV or Schedule V~~  
13 ~~that by aggregate weight, including an adulterant or diluent, is four hundred~~  
14 ~~grams (400 g) or more, is guilty of a felony and shall be imprisoned for not~~  
15 ~~less than fifteen (15) years nor more than forty (40) years, or life, and~~  
16 ~~shall be fined an amount not exceeding one hundred thousand dollars~~  
17 ~~(\$100,000).~~

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

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

22 ~~(A)(i) Imprisoned no less than four (4) years nor more~~  
23 ~~than ten (10) years or fined no more than twenty five thousand dollars~~  
24 ~~(\$25,000), or both, if the quantity of the controlled substance is less than~~  
25 ~~ten pounds (10 lbs.).~~

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

28 ~~(B)(i) Imprisoned for no less than five (5) years nor more~~  
29 ~~than twenty (20) years or fined no less than fifteen thousand dollars~~  
30 ~~(\$15,000) nor more than fifty thousand dollars (\$50,000), or both, if the~~  
31 ~~quantity of the controlled substance is ten pounds (10 lbs.) or more but less~~  
32 ~~than one hundred pounds (100 lbs.).~~

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

35 ~~(C)(i) Imprisoned for no less than six (6) years nor more~~  
36 ~~than thirty (30) years or fined no less than fifteen thousand dollars~~



1 ~~(\$15,000) nor more than one hundred thousand dollars (\$100,000), or both, if~~  
2 ~~the quantity of the controlled substance is one hundred pounds (100 lbs.) or~~  
3 ~~more but less than five hundred pounds (500 lbs.).~~

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

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

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

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

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

16 ~~(2) For purposes of this subsection, possession of one hundred~~  
17 ~~(100) dosage units of any one (1) counterfeit substance or possession of two~~  
18 ~~hundred (200) dosage units of counterfeit substances regardless of the type~~  
19 ~~creates a rebuttable presumption that the person possesses the counterfeit~~  
20 ~~substance with intent to deliver.~~

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

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

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

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

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

32 ~~(E) A counterfeit substance purporting to be a controlled~~  
33 ~~substance that is not classified as a scheduled controlled substance is~~  
34 ~~guilty of a Class D felony.~~

35 ~~(c) Possession of Counterfeit or Controlled Substance.~~

36 ~~(1) It is unlawful for any person to possess a controlled~~

1 ~~substance or counterfeit substance unless the controlled substance or~~  
 2 ~~counterfeit substance was obtained;~~

3 ~~(A) Directly from or pursuant to a valid prescription or~~  
 4 ~~an order of a practitioner while acting in the course of his or her~~  
 5 ~~professional practice; or~~

6 ~~(B) As otherwise authorized by this chapter.~~

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

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

10 ~~(B) Any other controlled substance, first offense, is~~  
 11 ~~guilty of a Class A misdemeanor;~~

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

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

16 ~~(3) For purposes of this subsection, an offense is considered a~~  
 17 ~~second or subsequent offense if, before his or her conviction for the~~  
 18 ~~offense, the person has been convicted for an offense under this subsection~~  
 19 ~~(c) or under any equivalent penal statute of the United States or of any~~  
 20 ~~state.~~

21 ~~(d) Rebuttable Presumption of Intent to Deliver.~~

22 ~~(1) Possession by any person of a quantity of any controlled~~  
 23 ~~substance including the mixture or substance listed in subdivision (d)(3) of~~  
 24 ~~this section in excess of the quantity limit set out in subdivision (d)(3) of~~  
 25 ~~this section creates a rebuttable presumption that the person possesses the~~  
 26 ~~controlled substance with intent to deliver.~~

27 ~~(2) The presumption may be overcome by the submission of~~  
 28 ~~evidence sufficient to create a reasonable doubt that the person charged~~  
 29 ~~possessed the controlled substance with intent to deliver.~~

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

31 ~~(i) Cocaine — one gram (1 g);~~

32 ~~(ii) Codeine — three hundred milligrams (300 mg);~~

33 ~~(iii) Hashish — six grams (6 g);~~

34 ~~(iv) Heroin — one hundred milligrams (100 mg);~~

35 ~~(v) Hydromorphone Hydrochloride — sixteen milligrams~~  
 36 ~~(16 mg);~~

1 ~~(vi) Lysergic Acid Diethylamide (LSD) — one hundred~~  
2 ~~micrograms (100 [mu]g);~~

3 ~~(vii) Marijuana — one ounce (1 oz.);~~

4 ~~(viii) Methadone — one hundred milligrams (100 mg);~~

5 ~~(ix) Methamphetamine — two hundred milligrams (200~~  
6 ~~mg);~~

7 ~~(x) Morphine — three hundred milligrams (300 mg);~~

8 ~~(xi) Opium — three grams (3 g); and~~

9 ~~(xii) Pethidine — three hundred milligrams (300 mg).~~

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

12 ~~(i) Depressant drug — twenty (20) hypnotic dosage~~  
13 ~~units;~~

14 ~~(ii) Hallucinogenic drug — ten (10) dosage units;~~  
15 ~~and~~

16 ~~(iii) Stimulant drug — two hundred milligrams (200~~  
17 ~~mg).~~

18 ~~(c) Immunity for Practitioner. — No civil or criminal liability shall~~  
19 ~~be imposed by virtue of this chapter on any practitioner who manufactures,~~  
20 ~~distributes, or possesses a counterfeit substance for use by a registered~~  
21 ~~practitioner in the course of professional practice or research or for use as~~  
22 ~~a placebo by a registered practitioner in the course of professional practice~~  
23 ~~or research.~~

24 ~~(f) Possession in Detention Facility — Enhanced Penalties. — When any~~  
25 ~~person is convicted of the unlawful possession of a controlled substance in~~  
26 ~~any state criminal detention facility, county criminal detention facility, or~~  
27 ~~city criminal detention facility, or any juvenile detention facility, the~~  
28 ~~penalty for the offense is increased to the next higher classification of~~  
29 ~~felony or misdemeanor as prescribed by law for the offense.~~

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

31 ~~(1) Simultaneous possession by any person of drug paraphernalia~~  
32 ~~and a drug precursor appropriate for use to manufacture methamphetamine or~~  
33 ~~possession by any person of drug paraphernalia appropriate for use to~~  
34 ~~manufacture methamphetamine that tests positive for methamphetamine residue~~  
35 ~~creates a rebuttable presumption that the person has engaged in conduct that~~  
36 ~~constitutes a substantial step in a course of conduct intended to result in~~

1 ~~the manufacture of methamphetamine in violation of § 5-3-201, conduct~~  
 2 ~~constituting attempt and this section.~~

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

6 ~~(h) Clean Up Liability — Restitution.~~

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

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

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

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

15  
 16 SECTION 34. Arkansas Code § 5-64-402 is amended to read as follows:

17 5-64-402. Controlled substances — Offenses relating to records,  
 18 maintaining premises, etc.

19 (a) It is unlawful for any person:

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

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

27 (b)(1) Any person who violates this section is guilty of a Class ~~D~~ C  
 28 felony.

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

32 ~~The following are certified drug-free zones~~ As used in this  
 33 section, "certified drug-free zone" means:

34 (1) A city or state park;

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

- 1           (3) A community or recreation center;  
 2           (4) A Boys Club, Girls Club, YMCA, or YWCA; or  
 3           (5) A skating rink or video arcade.

4  
 5           SECTION 35. Arkansas Code § 5-64-403 is amended to read as follows:

6           ~~5-64-403. Fraud—Criminal penalties—Drug paraphernalia.~~

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

8                 ~~(1) Distribute as a registrant a controlled substance classified~~  
 9           ~~in Schedule I or Schedule II, except pursuant to an order form as required by~~  
 10           ~~§ 5-64-307;~~

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

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

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

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

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

30           ~~(b) Penalties.~~

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

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

35                 ~~(A) A noncontrolled substance represented to be a~~  
 36           ~~controlled substance classified in Schedule I or Schedule II that is a~~

1 ~~narcotic drug is guilty of a Class B felony;~~

2 ~~(B) Any other nonecontrolled substance represented to be a~~  
3 ~~controlled substance classified in Schedule I, Schedule II, or Schedule III~~  
4 ~~is guilty of a Class C felony;~~

5 ~~(C) A nonecontrolled substance represented to be a~~  
6 ~~controlled substance classified in Schedule IV is guilty of a Class C felony;~~

7 ~~(D) A nonecontrolled substance represented to be a~~  
8 ~~controlled substance classified in Schedule V is guilty of a Class C felony;~~  
9 ~~and~~

10 ~~(E) A nonecontrolled substance represented to be a~~  
11 ~~controlled substance classified in Schedule VI is guilty of a Class D felony.~~

12 ~~(c) Drug Paraphernalia.~~

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

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

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

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

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

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

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

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

10          ~~(4)(A) It is unlawful for any person to place in any newspaper,~~  
11 ~~magazine, handbill, or other publication any advertisement knowing, or under~~  
12 ~~circumstances in which a person reasonably should know, that the purpose of~~  
13 ~~the advertisement, in whole or in part, is to promote the sale of a~~  
14 ~~counterfeit substance or of an object designed or intended for use as drug~~  
15 ~~paraphernalia.~~

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

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

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

24          5-64-403. Controlled substances – Fraudulent practices.

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

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

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

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

33                 (4) Make, distribute, or possess any punch, die, plate, stone,  
34 or other thing designed to print, imprint, or reproduce the trademark, trade  
35 name, or other identifying mark, imprint, or device of another person or any  
36 likeness of any trademark, trade name, or other identifying mark, imprint, or

1 device of another person upon any drug or container or labeling of a drug or  
 2 container so as to render the drug a counterfeit substance; or

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

8 (B) The proffer of a controlled substance creates a  
 9 rebuttable presumption of intent to deliver a noncontrolled substance that  
 10 does not require additional showing of specific intent to substitute a  
 11 noncontrolled substance.

12 (b) A person who violates:

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

15 (2) Subdivision (a)(5) of this section with respect to a  
 16 noncontrolled substance represented to be a controlled substance classified  
 17 in:

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

20 (B) Schedule III, Schedule IV, or Schedule V upon  
 21 conviction is guilty of a Class C felony; or

22 (C) Schedule VI upon conviction is guilty of a Class A  
 23 misdemeanor.

24  
 25 SECTION 36. Arkansas Code § 5-64-404(d), regarding the penalty for use  
 26 of a communication device, is amended to read as follows:

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

29  
 30 SECTION 37. Arkansas Code § 5-64-405 is amended to read as follows:

31 5-64-405. Continuing criminal enterprise.

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

34 (1) Violates any provision of this chapter that is a felony,  
 35 except ~~§ 5-64-401(e)~~ §§ 5-64-419 and 5-64-431; and

36 (2) The violation is a part of a continuing series of two (2) or



1 more felony offenses of this chapter, except ~~§ 5-64-401(e)~~ §§ 5-64-419 and 5-  
2 64-431:

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

7 (B) From which that person obtained substantial income or  
8 resources.

9 (b)(1) A person who engages in a continuing criminal enterprise is  
10 guilty of a an unclassified felony and upon conviction shall be sentenced to  
11 a term of imprisonment up to two (2) times the term otherwise authorized for  
12 the underlying offense referenced in subdivision (a)(1) of this section and  
13 shall be fined an amount up to two (2) times that authorized for the  
14 underlying 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 (c)(1) A person who violates subsection (a) of this section after a  
18 previous conviction under subsection (a) of this section has become final  
19 upon conviction is guilty of a an unclassified felony and shall be punished  
20 by a term of imprisonment not exceeding three (3) times that authorized for  
21 the underlying offense referenced in subdivision (a)(1) of this section and a  
22 fine not exceeding three (3) times the amount authorized for the underlying  
23 offense referenced in subdivision (a)(1) of this section.

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

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

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

36 (3) The procedures in the asset forfeiture law, § 5-64-505,

1 shall apply.

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

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

- 5 (1) Have his or her sentence suspended;  
6 (2) Be placed on probation;  
7 (3) Have imposition of sentence suspended;  
8 (4) Have the execution of the sentence;  
9 (5) Have the sentence deferred; or  
10 (6) Be eligible for § 16-93-301 et seq.

11  
12 SECTION 38. Arkansas Code § 5-64-406 is amended to read as follows:

13 5-64-406. ~~Distribution~~ Delivery to minors – Enhanced penalties.

14 (a) Any person eighteen (18) years of age or ~~over~~ older who violates §  
15 ~~5-64-401(a)~~ § 5-64-420, § 5-64-422, or § 5-64-430 by ~~distributing~~ delivering  
16 or trafficking a Schedule I or Schedule II controlled substance ~~listed in~~  
17 ~~Schedule I or Schedule II~~ that is a narcotic drug or methamphetamine to a  
18 person under eighteen (18) years of age who is at least three (3) years his  
19 or her junior is punishable by the fine authorized by ~~§ 5-64-401(a)(1)~~ § 5-  
20 64-420, § 5-64-422, or § 5-64-430, by a term of imprisonment of up to ~~twice~~  
21 two (2) times that authorized by ~~§ 5-64-401(a)(1)~~ § 5-64-420, § 5-64-422, or  
22 § 5-64-430, or by both.

23 (b) Any person eighteen (18) years of age or ~~over~~ older who violates §  
24 ~~5-64-401~~ § 5-64-422, § 5-64-424, § 5-64-426, § 5-64-428, or § 5-64-430 by  
25 ~~distributing~~ delivering or trafficking any other controlled substance ~~listed~~  
26 ~~in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V~~ to a  
27 person under eighteen (18) years of age who is at least three (3) years his  
28 or her junior is punishable by the fine authorized by ~~§ 5-64-401(a)(2), (3),~~  
29 ~~or (4)~~ § 5-64-422, § 5-64-424, § 5-64-426, § 5-64-428, or § 5-64-430, by a  
30 term of imprisonment up to ~~twice~~ two (2) times that authorized by ~~§ 5-64-~~  
31 ~~401(a)(2), (3), or (4)~~ § 5-64-422, § 5-64-424, § 5-64-426, § 5-64-428, or §  
32 5-64-430, or both.

33 (c) A person who is not otherwise subject to an enhancement to his or  
34 her sentence as provided in subsection (a) or (b) of this section and is  
35 convicted of delivering a controlled substance to a person under eighteen  
36 (18) years of age is subject to an additional term of imprisonment of ten

1 (10) years.

2  
3 SECTION 39. The introductory language of Arkansas Code § 5-64-407(a),  
4 regarding the manufacture of methamphetamine in the presence of certain  
5 persons, is amended to read as follows:

6 (a) ~~Any~~ A person who is found guilty of or who pleads guilty or nolo  
7 contendere to manufacture of methamphetamine, ~~§ 5-64-401(a)(1)~~ § 5-64-421, or  
8 possession of drug paraphernalia with the intent to manufacture  
9 methamphetamine, ~~§ 5-64-403(e)(5)~~ § 5-64-433(a)(2), may be subject to an  
10 enhanced sentence of an additional term of imprisonment of ten (10) years if  
11 the offense is committed:

12  
13 SECTION 40. Arkansas Code § 5-64-408 is amended to read as follows:

14 5-64-408. Subsequent convictions – Enhanced penalties.

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

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

24 (c) This section does not apply to an offense under ~~§ 5-64-401(e)~~ § 5-  
25 64-419 or § 5-64-431.

26  
27 SECTION 41. Arkansas Code § 5-64-410 is repealed.

28 ~~5-64-410. Penalties for delivery – Enhanced penalties.~~

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

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

33 ~~(B) Any person convicted of delivering a controlled~~  
34 ~~substance included in Schedule I, Schedule II, Schedule III, Schedule IV,~~  
35 ~~Schedule V, or Schedule VI to a school student in grade one through twelve~~  
36 ~~(1-12) or any other person under eighteen (18) years of age shall be~~

1 sentenced for a term of imprisonment of not less than ten (10) years.

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

6 ~~(b) The provisions of this section are cumulative and supplemental to~~  
 7 ~~any other law of this state prescribing a penalty for delivery of a~~  
 8 ~~controlled substance and are deemed to modify only a law in direct conflict.~~  
 9

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

11 5-64-411. Proximity to certain facilities – Enhanced penalties.

12 (a) Any person who commits an offense under ~~§ 5-64-401(a)~~ §§ 5-64-420  
 13 – § 5-64-430 by ~~selling, delivering, possessing with intent to deliver,~~  
 14 ~~dispensing, manufacturing, transporting, administering, or distributing or~~  
 15 trafficking a controlled substance may be subject to an enhanced sentence of  
 16 an additional term of imprisonment of ten (10) years if the offense is  
 17 committed on or within one thousand feet (1,000') of the real property of:

18 (1) A city or state park;

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

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

23 (4) A skating rink, Boys Club, Girls Club, YMCA, YWCA, or  
 24 community or recreation center;

25 (5) A publicly funded and administered multifamily housing  
 26 development;

27 (6) A drug or alcohol treatment facility;

28 (7) A day care center;

29 (8) A church; or

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

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

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

36 (d)(1) Except for property covered by subdivision (a)(3) of this

1 section, property covered by this section shall have a notice posted at the  
2 entrances to the property stating:

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

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

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

14  
15 SECTION 43. Arkansas Code § 5-64-413(a), regarding probation for  
16 first-time drug offenders, is amended to read as follows:

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

27  
28 SECTION 44. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
29 to add a new section to read as follows:

30 5-64-419. Possession of a controlled substance.

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

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

34 (1) A Schedule I or Schedule II controlled substance with an  
35 aggregate weight, including an adulterant or diluent, of:

36 (A) Less than two grams (2g) upon conviction is guilty of

1 a Class D felony;

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

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

6 (2) A Schedule III controlled substance with an aggregate  
7 weight, including an adulterant or diluent, of:

8 (A) Less than twenty-eight grams (28g) upon conviction is  
9 guilty of a Class D felony; or

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

12 (3) A Schedule IV or Schedule V controlled substance with an  
13 aggregate weight, including an adulterant or diluent, of:

14 (A) Less than two hundred grams (200g) upon conviction is  
15 guilty of a Class D felony; or

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

18 (4)(A) Except as provided in subdivision (b)(4)(B) of this  
19 section, a Schedule VI controlled substance that is:

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

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

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

26 (iv) Twenty five pounds (25 lbs.) or more but less  
27 than one hundred pounds (100 lbs.) upon conviction is guilty of a Class B  
28 felony; or

29 (v) One hundred pounds (100 lbs.) or more but less  
30 than five hundred pounds (500 lbs.) upon conviction is guilty of a Class A  
31 felony.

32 (B) A person who violates this section with respect to a  
33 Schedule VI controlled substance with an aggregate weight, including an  
34 adulterant or diluent, of one ounce (1 oz.) or more but less than four ounces  
35 (4 oz.) upon conviction is guilty of a Class D felony if the person has two  
36 (2) or more prior convictions under subdivision (b)(4) of this section.

1       (c) If a person possesses a controlled substance in violation of this  
2 section while that person was an inmate in a state criminal detention  
3 facility, county criminal detention facility, city criminal detention  
4 facility, or juvenile detention facility, the penalty for the offense is  
5 increased to the next higher classification as prescribed by law for the  
6 offense.

7  
8       SECTION 45. Arkansas Code Title 5, Subtitle 6, Chapter 64, Subchapter  
9 4 is amended to add a new section to read as follows:

10       5-64-420. Delivery of methamphetamine.

11       (a) Except as provided by this chapter, it is unlawful for a person to  
12 deliver methamphetamine.

13       (b) The possession of methamphetamine creates a rebuttable presumption  
14 of delivery of methamphetamine if:

15               (1) The delivery of methamphetamine was in direct exchange for  
16 money or a monetary equivalent for any amount of methamphetamine; or

17               (2) A combination of at least three (3) of the following factors  
18 was present:

19                       (A) The person possessed the means to weigh and separate  
20 methamphetamine;

21                       (B) The person possessed the means to package  
22 methamphetamine, such as small plastic bags, wrapping, foil, or other  
23 commonly used packaging materials;

24                       (C) The person possessed a firearm;

25                       (D) The person possessed at least two hundred dollars  
26 (\$200) in cash;

27                       (E) The person possessed records of drug transactions or  
28 customer lists;

29                       (F) The location of the transaction was structurally  
30 modified in order to facilitate the delivery of methamphetamine, including  
31 painting, electrical alterations, or plumbing alterations; or

32                       (G) The person possessed at least two (2) other Schedule  
33 I-VI controlled substances in any amount.

34       (c)(1) A person who delivers less than twenty-eight grams (28g) by  
35 aggregate weight, including an adulterant or diluent, of methamphetamine upon  
36 conviction is guilty of a Class B felony.

1           (2) A person who delivers twenty-eight grams (28g) or more but  
2 less than two hundred grams (200g) by aggregate weight, including an  
3 adulterant or diluent, of methamphetamine upon conviction is guilty of a  
4 Class Y felony.

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

8           5-64-421. Manufacture of methamphetamine.

9           (a) Except as provided by this chapter, it is unlawful for a person to  
10 manufacture methamphetamine.

11           (b) The possession of methamphetamine creates a rebuttable presumption  
12 of manufacturing methamphetamine if:

13           (1) The person is observed in the actual manufacture of  
14 methamphetamine; or

15           (2) A combination of at least three (3) of the following factors  
16 was present:

17           (A) The person possessed the means to weigh and separate  
18 methamphetamine;

19           (B) The person possessed the means to package  
20 methamphetamine, such as small plastic bags, wrapping, foil, or other  
21 commonly used packaging materials;

22           (C) The person possessed a firearm;

23           (D) A location used by the person was structurally  
24 modified in order to facilitate the manufacture of methamphetamine, including  
25 painting, electrical alterations, or plumbing alterations;

26           (E) The person possessed equipment or paraphernalia used  
27 in manufacturing, producing, or altering methamphetamine, such as recipes,  
28 precursor chemicals, laboratory materials, specialized lighting, ventilation,  
29 or power-generating devices; or

30           (F) The person had additional security measures or  
31 fortifications constructed, created, or erected for a location used by the  
32 person with the potential to injure another person.

33           (c)(1) A person who manufactures less than twenty-eight grams (28g) by  
34 aggregate weight, including an adulterant or diluent, of methamphetamine upon  
35 conviction is guilty of a Class B felony.

36           (2) A person who manufactures twenty-eight grams (28g) or more



1 but less than two hundred grams (200g) by aggregate weight, including an  
2 adulterant or diluent, of methamphetamine upon conviction is guilty of a  
3 Class Y felony.

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

7 5-64-422. Delivery of a Schedule I or Schedule II controlled substance  
8 that is not methamphetamine.

9 (a) This section does not apply to the delivery of methamphetamine,  
10 which is governed by § 5-64-420.

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

13 (c) The possession of a Schedule I or Schedule II controlled substance  
14 creates a rebuttable presumption of delivery of a Schedule I or Schedule II  
15 controlled substance if:

16 (1) The delivery of a Schedule I or Schedule II controlled  
17 substance was in direct exchange for money or a monetary equivalent for any  
18 amount of a Schedule I or II controlled substance; or

19 (2) A combination of at least three (3) of the following factors  
20 was present:

21 (A) The person possessed the means to weigh and separate a  
22 Schedule I or Schedule II controlled substance;

23 (B) The person possessed the means to package a Schedule I  
24 or Schedule II controlled substance, such as small plastic bags, wrapping,  
25 foil, or other commonly used packaging materials;

26 (C) The person possessed a firearm;

27 (D) The person possessed at least two hundred dollars  
28 (\$200) in cash;

29 (E) The person possessed records of drug transactions or  
30 customer lists;

31 (F) The location of the transaction was structurally  
32 modified in order to facilitate the delivery of a Schedule I or Schedule II  
33 controlled substance, including painting, electrical alterations, or plumbing  
34 alterations; or

35 (G) The person possessed at least two (2) other Schedule  
36 I-VI controlled substances in any amount.

1       (d)(1) A person who delivers less than two grams (2g) by aggregate  
2 weight, including an adulterant or diluent, of a Schedule I or Schedule II  
3 controlled substance upon conviction is guilty of a Class C felony.

4       (2) A person who delivers two grams (2g) or more but less than  
5 twenty-eight grams (28g) by aggregate weight, including an adulterant or  
6 diluent, of a Schedule I or Schedule II controlled substance upon conviction  
7 is guilty of a Class B felony.

8       (3) A person who delivers twenty-eight grams (28g) or more but  
9 less than two hundred grams (200g) by aggregate weight, including an  
10 adulterant or diluent, of a Schedule I or Schedule II controlled substance  
11 upon conviction is guilty of a Class A felony.

12  
13       SECTION 48. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
14 to add a new section to read as follows:

15       5-64-423. Manufacture of a Schedule I or Schedule II controlled  
16 substance that is not methamphetamine.

17       (a) This section does not apply to the manufacture of methamphetamine,  
18 which is governed by § 5-64-421.

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) The possession of a Schedule I or Schedule II controlled substance  
22 creates a rebuttable presumption of manufacturing a Schedule I or Schedule II  
23 controlled substance if:

24       (1) The person is observed in the actual manufacture of a  
25 Schedule I or Schedule II controlled substance; or

26       (2) A combination of at least three (3) of the following factors  
27 was present:

28       (A) The person possessed the means to weigh and separate a  
29 Schedule I or Schedule II controlled substance;

30       (B) The person possessed the means to package a Schedule I  
31 or Schedule II controlled substance, such as small plastic bags, wrapping,  
32 foil, or other commonly used packaging materials;

33       (C) The person possessed a firearm;

34       (D) A location used by the person was structurally  
35 modified in order to facilitate the manufacture of a Schedule I or Schedule  
36 II controlled substance, including painting, electrical alterations, or

1 plumbing alterations;

2 (E) The person possessed equipment or paraphernalia used  
3 in manufacturing, growing, cultivating, producing, or altering a Schedule I  
4 or Schedule II controlled substance, such as recipes, precursor chemicals,  
5 laboratory materials, specialized lighting, ventilation, or power-generating  
6 devices; or

7 (F) The person had additional security measures or  
8 fortifications constructed, created, or erected for a location used by the  
9 person with the potential to injure another person.

10 (d)(1) A person who manufactures less than two grams (2g) by aggregate  
11 weight, including an adulterant or diluent, of a Schedule I or Schedule II  
12 controlled substance upon conviction is guilty of a Class C felony.

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

17 (3) A person who manufactures twenty-eight grams (28g) or more  
18 but less than two hundred grams (200g) by aggregate weight, including an  
19 adulterant or diluent, of a Schedule I or Schedule II controlled substance  
20 upon conviction is guilty of a Class A felony.

21  
22 SECTION 49. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
23 to add a new section to read as follows:

24 5-64-424. Delivery of a Schedule III controlled substance.

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

27 (b) The possession of a Schedule III controlled substance creates a  
28 rebuttable presumption of delivery of a Schedule III controlled substance if:

29 (1) The delivery of a Schedule III controlled substance was in  
30 direct exchange for money or a monetary equivalent for any amount of a  
31 Schedule III controlled substance; or

32 (2) A combination of at least three (3) of the following factors  
33 was present:

34 (A) The person possessed the means to weigh and separate a  
35 Schedule III controlled substance;

36 (B) The person possessed the means to package a Schedule

1 III controlled substance, such as small plastic bags, wrapping, foil, or  
2 other commonly used packaging materials;

3 (C) The person possessed a firearm;

4 (D) The person possessed at least two hundred dollars  
5 (\$200) in cash;

6 (E) The person possessed records of drug transactions or  
7 customer lists;

8 (F) The location of the transaction was structurally  
9 modified in order to facilitate the delivery of a Schedule III controlled  
10 substance, including painting, electrical alterations, or plumbing  
11 alterations; or

12 (G) The person possessed at least two (2) other Schedule  
13 I-VI controlled substances in any amount.

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

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

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

25  
26 SECTION 50. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
27 to add a new section to read as follows:

28 5-64-425. Manufacture of a Schedule III controlled substance.

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

31 (b) The possession of a Schedule III controlled substance creates a  
32 rebuttable presumption of manufacturing a Schedule III controlled substance  
33 if:

34 (1) The person is observed in the actual manufacture of a  
35 Schedule III controlled substance; or

36 (2) A combination of at least three (3) of the following factors

1 was present:

2 (A) The person possessed the means to weigh and separate a  
3 Schedule III controlled substance;

4 (B) The person possessed the means to package a Schedule  
5 III controlled substance, such as small plastic bags, wrapping, foil, or  
6 other commonly used packaging materials;

7 (C) The person possessed a firearm;

8 (D) A location used by the person was structurally  
9 modified in order to facilitate the manufacture of a Schedule III controlled  
10 substance, including painting, electrical alterations, or plumbing  
11 alterations;

12 (E) The person possessed equipment or paraphernalia used  
13 in manufacturing, growing, cultivating, producing, or altering a Schedule III  
14 controlled substance, such as recipes, precursor chemicals, laboratory  
15 materials, specialized lighting, ventilation, or power-generating devices; or

16 (F) The person had additional security measures or  
17 fortifications constructed, created, or erected for a location used by the  
18 person with the potential to injure another person.

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

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

26 (3) A person who manufactures two hundred grams (200g) or more  
27 but less than four hundred grams (400g) by aggregate weight, including an  
28 adulterant or diluent, of a Schedule III controlled substance upon conviction  
29 is guilty of a Class A felony.

30  
31 SECTION 51. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
32 to add a new section to read as follows:

33 5-64-426. Delivery of a Schedule IV or Schedule V controlled  
34 substance.

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

1       (b) The possession of a Schedule IV or Schedule V controlled substance  
2 creates a rebuttable presumption of delivery of a Schedule IV or Schedule V  
3 controlled substance if:

4           (1) The delivery of a Schedule IV or Schedule V controlled  
5 substance was in direct exchange for money or a monetary equivalent for any  
6 amount of a Schedule IV or Schedule V controlled substance; or

7           (2) A combination of at least three (3) of the following factors  
8 was present:

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

11                   (B) The person possessed the means to package a Schedule  
12 IV or Schedule V controlled substance, such as small plastic bags, wrapping,  
13 foil, or other commonly used packaging materials;

14                   (C) The person possessed a firearm;

15                   (D) The person possessed at least two hundred dollars  
16 (\$200) in cash;

17                   (E) The person possessed records of drug transactions or  
18 customer lists;

19                   (F) The location of the transaction was structurally  
20 modified in order to facilitate the delivery of a Schedule IV or Schedule V  
21 controlled substance, including painting, electrical alterations, or plumbing  
22 alterations; or

23                   (G) The person possessed at least two (2) other Schedule  
24 I-VI controlled substances in any amount.

25       (c)(1) A person who delivers less than two hundred grams (200g) by  
26 aggregate weight, including an adulterant or diluent, of a Schedule IV or  
27 Schedule V controlled substance upon conviction is guilty of a Class D  
28 felony.

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

33           (3) A person who delivers four hundred grams (400g) or more but  
34 less than eight hundred grams (800g) 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 B felony.

1  
2 SECTION 52. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
3 to add a new section to read as follows:

4 5-64-427. Manufacture of a Schedule IV or Schedule V controlled  
5 substance.

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

8 (b) The possession of a Schedule IV or Schedule V controlled substance  
9 creates a rebuttable presumption of manufacturing a Schedule IV or Schedule V  
10 controlled substance if:

11 (1) The person is observed in the actual manufacture of a  
12 Schedule IV or Schedule V controlled substance; or

13 (2) A combination of at least three (3) of the following factors  
14 was present:

15 (A) The person possessed the means to weigh and separate a  
16 Schedule IV or Schedule V controlled substance;

17 (B) The person possessed the means to package a Schedule  
18 IV or Schedule V controlled substance, such as small plastic bags, wrapping,  
19 foil, or other commonly used packaging materials;

20 (C) The person possessed a firearm;

21 (D) A location used by the person was structurally  
22 modified in order to facilitate the manufacture of a Schedule IV or Schedule  
23 V controlled substance, including painting, electrical alterations, or  
24 plumbing alterations;

25 (E) The person possessed equipment or paraphernalia used  
26 in manufacturing, growing, cultivating, producing, or altering a Schedule IV  
27 or Schedule V controlled substance, such as recipes, precursor chemicals,  
28 laboratory materials, specialized lighting, ventilation, or power-generating  
29 devices; or

30 (F) The person had additional security measures or  
31 fortifications constructed, created, or erected for a location used by the  
32 person with the potential to injure another person.

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

1           (2) A person who manufactures two hundred grams (200g) or more  
2 but less than four hundred grams (400g) 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 C felony.

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

9  
10           SECTION 53. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
11 to add a new section to read as follows:

12           5-64-428. Delivery of a Schedule VI controlled substance.

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

15           (b) The possession of a Schedule VI controlled substance creates a  
16 rebuttable presumption of delivery of a Schedule VI controlled substance if:

17           (1) The delivery of a Schedule VI controlled substance was in  
18 direct exchange for money or a monetary equivalent for any amount of a  
19 Schedule VI controlled substance; or

20           (2) A combination of at least three (3) of the following factors  
21 was present:

22                   (A) The person possessed the means to weigh and separate a  
23 Schedule VI controlled substance;

24                   (B) The person possessed the means to package a Schedule  
25 VI controlled substance, such as small plastic bags, wrapping, foil, or other  
26 commonly used packaging materials;

27                   (C) The person possessed a firearm;

28                   (D) The person possessed at least two hundred dollars  
29 (\$200) in cash;

30                   (E) The person possessed records of drug transactions or  
31 customer lists;

32                   (F) The location of the transaction was structurally  
33 modified in order to facilitate the delivery of a Schedule VI controlled  
34 substance, including painting, electrical alterations, or plumbing  
35 alterations; or

36                   (G) The person possessed at least two (2) other Schedule



1 I-VI controlled substances in any amount.

2 (c)(1) A person who delivers fourteen grams (14g) or less by aggregate  
3 weight, including an adulterant or diluent, of a Schedule VI controlled  
4 substance upon conviction is guilty of a Class A misdemeanor.

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

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

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

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

21  
22 SECTION 54. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
23 to add a new section to read as follows:

24 5-64-429. Manufacture of a Schedule VI controlled substance.

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

27 (b) The possession of a Schedule VI controlled substance creates a  
28 rebuttable presumption of manufacturing a Schedule VI controlled substance  
29 if:

30 (1) The person is observed in the actual manufacture of a  
31 Schedule VI controlled substance; or

32 (2) A combination of at least three (3) of the following factors  
33 was present:

34 (A) The person possessed the means to weigh and separate a  
35 Schedule VI controlled substance;

36 (B) The person possessed the means to package a Schedule

1 VI controlled substance, such as small plastic bags, wrapping, foil, or other  
2 commonly used packaging materials;

3 (C) The person possessed a firearm;

4 (D) A location used by the person was structurally  
5 modified in order to facilitate the manufacture of a Schedule VI controlled  
6 substance, including painting, electrical alterations, or plumbing  
7 alterations;

8 (E) The person possessed equipment or paraphernalia used  
9 in manufacturing, growing, cultivating, producing, or altering a Schedule VI  
10 controlled substance, such as recipes, precursor chemicals, laboratory  
11 materials, specialized lighting, ventilation, or power-generating devices; or

12 (F) The person had additional security measures or  
13 fortifications constructed, created, or erected for a location used by the  
14 person with the potential to injure another person.

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

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

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

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

29 (5) A person who manufactures one hundred pounds (100 lbs.) or  
30 more but less than five hundred pounds (500 lbs.) by aggregate weight,  
31 including an adulterant or diluent, upon conviction is guilty of a Class A  
32 felony.

33  
34 SECTION 55. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
35 to add a new section to read as follows:

36 5-64-430. Trafficking a controlled substance.

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

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

6               (1) Methamphetamine, two hundred grams (200g) or more;

7               (2) Schedule I or Schedule II controlled substance, two hundred  
8 grams (200g) or more;

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

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

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

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

16  
17       SECTION 56. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
18 to add a new section to read as follows:

19       5-64-431. Possession of a counterfeit substance.

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

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

25               (2) As otherwise authorized by this chapter.

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

27               (1) A Schedule I or Schedule II controlled substance is guilty  
28 of a Class D felony;

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

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

33       (c) For purposes of subsection (b) of this section, an offense is  
34 considered a third or subsequent offense if, before his or her conviction for  
35 the offense, the person has been convicted two (2) or more times for an  
36 offense under subsection (b) of this section or under any equivalent penal

1 statute of the United States or of any state.

2  
3 SECTION 57. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
4 to add a new section to read as follows:

5 5-64-432. Delivery or manufacture of a counterfeit substance.

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

8 (b) For purposes of this section, possession of one hundred (100)  
9 dosage units of any one (1) counterfeit substance or possession of two  
10 hundred (200) dosage units of counterfeit substances regardless of the type  
11 creates a rebuttable presumption that the person is delivering or  
12 manufacturing the counterfeit substance.

13 (c) Any person who violates this subsection with respect to:

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

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

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

22  
23 SECTION 58. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
24 to add a new section to read as follows:

25 5-64-433. Drug paraphernalia.

26 (a)(1) A person who possesses with the purpose to use drug  
27 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture,  
28 compound, convert, produce, process, prepare, test, analyze, pack, repack,  
29 store, contain, or conceal or to inject, ingest, inhale, or otherwise  
30 introduce into the human body a controlled substance in violation of this  
31 chapter upon conviction is guilty of a Class A misdemeanor except:

32 (2) If the controlled substance is methamphetamine, the person  
33 upon conviction is guilty of a:

34 (A) Class C felony if the drug paraphernalia is capable of  
35 producing or manufacturing less than twenty-eight (28g) of methamphetamine;  
36 or

1           (B) Class A felony if the drug paraphernalia is capable of  
2 producing or manufacturing twenty-eight (28g) or more of methamphetamine; or

3           (3) If the controlled substance is a Schedule I or Schedule II  
4 controlled substance that is not methamphetamine, the person upon conviction  
5 is guilty of a:

6           (A) Class D felony if the drug paraphernalia is capable of  
7 producing or manufacturing less than two grams (2g) of the Schedule I or  
8 Schedule II controlled substance;

9           (B) Class C felony if the drug paraphernalia is capable of  
10 producing or manufacturing two grams (2g) or more but less than twenty-eight  
11 grams (28g) of the Schedule I or Schedule II controlled substance;

12           (C) Class B felony if the drug paraphernalia is capable of  
13 producing or manufacturing twenty-eight grams (28g) or more but less than two  
14 hundred grams (200g) of the Schedule I or Schedule II controlled substance;

15 or

16           (D) Class A felony if the drug paraphernalia is capable of  
17 producing or manufacturing two hundred grams (200g) or more of the Schedule I  
18 or Schedule II controlled substance; or

19           (4) If the controlled substance is a Schedule III controlled  
20 substance, the person upon conviction is guilty of a:

21           (A) Class D felony if the drug paraphernalia is capable of  
22 producing or manufacturing less than twenty-eight grams (28g) of the Schedule  
23 III controlled substance;

24           (B) Class C felony if the drug paraphernalia is capable of  
25 producing or manufacturing twenty-eight grams (28g) or more but less than two  
26 hundred grams (200g) of the Schedule III controlled substance;

27           (C) Class B felony if the drug paraphernalia is capable of  
28 producing or manufacturing two hundred grams (200g) or more but less than  
29 four hundred grams (400g) of the Schedule III controlled substance; or

30           (D) Class A felony if the drug paraphernalia is capable of  
31 producing or manufacturing four hundred grams (400g) or more of the Schedule  
32 III controlled substance; or

33           (5) If the controlled substance is a Schedule IV or Schedule V  
34 controlled substance, the person upon conviction is guilty of a:

35           (A) Class D felony if the drug paraphernalia is capable of  
36 producing or manufacturing less than two hundred grams (200g) of the Schedule

1 IV or Schedule V controlled substance;

2 (B) Class C felony if the drug paraphernalia is capable of  
3 producing or manufacturing two hundred grams (200g) or more but less than  
4 four hundred grams (400g) of the Schedule IV or Schedule V controlled  
5 substance;

6 (C) Class B felony if the drug paraphernalia is capable of  
7 producing or manufacturing more than four hundred grams (400g) but less than  
8 eight hundred grams (800g) of the Schedule IV or Schedule V controlled  
9 substance; or

10 (D) Class A felony if the drug paraphernalia is capable of  
11 producing or manufacturing eight hundred grams (800g) or more of the Schedule  
12 IV or Schedule V controlled substance; or

13 (6) If the controlled substance is a Schedule VI controlled  
14 substance, the person upon conviction is guilty of a:

15 (A) Class B misdemeanor if the drug paraphernalia is  
16 capable of producing or manufacturing less than fourteen grams (14g) of the  
17 Schedule VI controlled substance;

18 (B) Class A misdemeanor if the drug paraphernalia is  
19 capable of producing or manufacturing fourteen grams (14g) or more but less  
20 than four ounces (4 oz.) of the Schedule VI controlled substance;

21 (C) Class D felony if the drug paraphernalia is capable of  
22 producing or manufacturing four ounces (4 oz.) or more but less than ten  
23 pounds (10 lbs.) of the Schedule VI controlled substance;

24 (D) Class C felony if the drug paraphernalia is capable of  
25 producing or manufacturing ten pounds (10 lbs.) or more but less than twenty  
26 five pounds (25 lbs.) of the Schedule VI controlled substance;

27 (E) Class B felony if the drug paraphernalia is capable of  
28 producing or manufacturing twenty five pounds (25 lbs.) or more but less than  
29 five hundred pounds (500 lbs.) of the Schedule VI controlled substance; or

30 (F) Class A felony if the drug paraphernalia is capable of  
31 producing or manufacturing five hundred pounds (500 lbs.) or more of the  
32 Schedule VI controlled substance.

33  
34 SECTION 59. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
35 to add a new section to read as follows:

36 5-64-434. Drug paraphernalia – Delivery to a minor.

1       (a) A person eighteen (18) years of age or older who violates § 5-64-  
2 433 by delivering drug paraphernalia in the course of and in furtherance of a  
3 felony violation of this chapter to a person under eighteen (18) years of age  
4 who is at least three (3) years his or her junior upon conviction is guilty  
5 of a Class C felony.

6       (b) Otherwise, a person eighteen (18) years of age or older who  
7 violates § 5-64-433 by delivering drug paraphernalia to a person under  
8 eighteen (18) years of age who is at least three (3) years his or her junior  
9 upon conviction is guilty of a Class A misdemeanor.

10  
11       SECTION 60. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
12 to add a new section to read as follows:

13       5-64-435. Advertisement of a counterfeit substance or drug  
14 paraphernalia.

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

21  
22       SECTION 61. Arkansas Code Title 5, Chapter 64, Subchapter 4 is amended  
23 to add a new section to read as follows:

24       5-64-436. Civil or criminal liability.

25       (a) Civil or criminal liability shall not be imposed by this chapter  
26 on any practitioner who manufactures, distributes, or possesses a counterfeit  
27 substance for use by a practitioner in the course of professional practice or  
28 research or for use as a placebo by a practitioner in the course of  
29 professional practice or research.

30       (b)(1) A person who violates §§ 5-64-419 – 5-64-432 is liable for the  
31 cost of the cleanup of the site where the person:

32               (A) Manufactured a controlled substance; or

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

35       (2) The person shall make restitution to the state or local  
36 agency responsible for the cleanup for the cost of the cleanup under § 5-4-

1 205.

2  
3 SECTION 62. Arkansas Code § 5-64-505(a)(4), regarding certain items  
4 subject to forfeiture, is amended to read as follows:

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

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

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

16 (ii) Upon a showing described in subdivision (a)(4)(B)(i)  
17 of this section by the owner or interest holder, the conveyance may  
18 nevertheless be forfeited if the prosecuting attorney establishes that the  
19 owner or interest holder either knew or should reasonably have known that the  
20 conveyance would be used to transport or in any manner to facilitate the  
21 transportation, for the purpose of sale or receipt, of property described in  
22 ~~subdivision~~ subdivisions (a)(1) or (a)(2) of this section;

23 (C) A conveyance is not subject to forfeiture for a violation of  
24 ~~§ 5-64-401(e)~~ §§ 5-64-419 and 5-64-431 ; and

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

28  
29 SECTION 63. Arkansas Code § 5-64-505(a)(8), regarding certain items  
30 subject to forfeiture, is amended to read as follows:

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

34 (A) No real property is subject to forfeiture under this chapter  
35 by reason of any act or omission established by the owner of the real  
36 property by a preponderance of the evidence to have been committed or omitted



1 without his or her knowledge or consent;

2 (B) Real property is not subject to forfeiture for a violation  
3 of ~~§ 5-64-401(e)~~ § 5-64-419 or § 5-64-431;

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

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

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

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

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

21  
22 SECTION 64. Arkansas Code § 5-64-1102 is amended to read as follows:

23 5-64-1102. Possession with intent to manufacture – Unlawful  
24 distribution.

25 (a)(1) It is unlawful for a person to possess ephedrine,  
26 pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or  
27 salts of optical isomers in a quantity capable of producing up to twenty-  
28 eight grams (28g) of a Schedule I or Schedule II controlled substance that is  
29 a narcotic drug or methamphetamine with intent to manufacture  
30 methamphetamine.

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

33 (b)(1) It is unlawful for a person to possess ephedrine,  
34 pseudoephedrine, or phenylpropanolamine, or their salts, optical isomers, or  
35 salts of optical isomers in a quantity capable of producing at least twenty-  
36 eight grams (28g) of a Schedule I or Schedule II controlled substance that is

1 a narcotic drug or methamphetamine with intent to manufacture  
 2 methamphetamine.

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

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

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

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

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

15  
 16 SECTION 65. Arkansas Code § 5-74-106(a), regarding the crime of  
 17 simultaneous possession of drugs and firearms, is amended to read as follows:

18 (a) ~~No person shall~~ A person shall not unlawfully commit a felony  
 19 violation of ~~§ 5-64-401~~ § 5-64-419 – § 5-64-432 or unlawfully attempt,  
 20 solicit, or conspire to commit a felony violation of ~~§ 5-64-401~~ § 5-64-419 –  
 21 § 5-64-432 while in possession of:

22 (1) A firearm; or

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

26  
 27 SECTION 66. Arkansas Code § 9-28-409(e)(1)(T), regarding criminal  
 28 record and child maltreatment checks for the placement of children, is  
 29 amended to read as follows:

30 (T) Engaging in conduct with respect to controlled substances as  
 31 prohibited in the former § 5-64-401 and § 5-64-419 – § 5-64-432;

32  
 33 SECTION 67. Arkansas Code § 12-29-202(e), regarding the awarding of  
 34 meritorious good time, is amended to read as follows:

35 (e) ~~In no event shall the awarding of meritorious~~ Meritorious good  
 36 time awarded under subdivision (d)(1) of this section shall not be applicable

1 to persons sentenced under ~~§ 16-93-611(a)(1)(A)-(E)~~ § 16-93-620.

2  
3 SECTION 68. Arkansas Code § 12-29-404 is amended to read as follows:

4 12-29-404. ~~Incurable diseases~~ Medical parole for a terminal illness or  
5 permanent incapacitation.

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

16 (a) As used in this section:

17 (1) "Permanently incapacitated" means an inmate who, as  
18 determined by a licensed physician:

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

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

22 (C) No longer poses a threat to public safety because of  
23 the medical condition; and

24 (2) "Terminally ill" means an inmate who, as determined by a  
25 licensed physician:

26 (A) Has an incurable condition caused by illness or  
27 disease;

28 (B) Will likely die within two (2) years due to the  
29 illness or disease; and

30 (C) No longer poses a threat to public safety because of  
31 the illness or disease.

32 (b) The Director of the Department of Correction or the Director of  
33 the Department of Community Correction shall communicate to the Parole Board  
34 when, in the independent opinions of either a Department of Correction  
35 physician or Department of Community Correction physician and a consultant  
36 physician in Arkansas, an inmate is either terminally ill or permanently

1 incapacitated and should be considered for transfer to parole supervision.

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

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

10 (d) An inmate who is required to register as a sex offender under the  
 11 Sex Offender Registration Act of 1997, § 12-12-901 et seq., and is assessed  
 12 as a Level Three (3) offender or higher is not eligible for parole  
 13 supervision under this section.

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

18  
 19 SECTION 69. Arkansas Code § 16-90-120 is amended to read as follows:  
 20 16-90-120. Felony with firearm.

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

26 (b) The period of confinement, if any, imposed ~~pursuant to~~ under this  
 27 section shall be in addition to any fine or penalty provided by law as  
 28 punishment for the felony itself. Any additional prison sentence imposed  
 29 under the provisions of this section, if any, shall run consecutively and not  
 30 concurrently with any period of confinement imposed for conviction of the  
 31 felony itself.

32 (c) A separate appeal may be taken to the Supreme Court from the  
 33 imposition of the sentence, if any, provided for by this section, and any  
 34 appeal shall be in the manner prescribed for appellate review of conviction  
 35 of criminal offenses in general. However, the sole and only question to be  
 36 decided upon the separate appeal shall be whether the evidence warrants a

1 finding that the defendant actually employed a firearm in the commission of,  
 2 or escape from commission of, the felony for which he or she stands  
 3 convicted.

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

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

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

16 (i) Murder in the first degree, § 5-10-102;

17 (ii) Kidnapping that is a Class Y felony, § 5-11-  
 18 102;

19 (iii) Aggravated robbery, § 5-12-103;

20 (iv) Rape, § 5-14-103; or

21 (v) Causing a catastrophe, § 5-38-202(a);

22 (B)(i) Except as provided in subdivision (e)(1)(B)(ii) of  
 23 this section, seventy percent (70%) of the term of imprisonment to which the  
 24 person is sentenced under subsection (a) of this section if the underlying  
 25 felony was any of the following:

26 (a) Manufacture of methamphetamine, ~~§ 5-64-~~  
 27 ~~401(a)(1)~~ § 5-64-421; or

28 (b) Possession of drug paraphernalia with the  
 29 intent to manufacture methamphetamine, ~~§ 5-64-403(e)(5)~~ §5-64-433(a)(2)(B).

30 (ii) The person is eligible for parole or community  
 31 correction transfer if the person serves at least fifty percent (50%) of the  
 32 term of imprisonment to which the person is sentenced under subsection (a) of  
 33 this section for the offenses listed in subdivision (e)(1)(B)(i) of this  
 34 section with credit for the award of meritorious good time under § 12-29-201  
 35 unless the person is sentenced to a term of life imprisonment. The time  
 36 served by any person under this subdivision (e)(1)(B)(ii) shall not be

1 reduced to less than fifty percent (50%) of the person's original sentence  
2 under subsection (a) of this section; or

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

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

11 (A) The defendant was a juvenile when the offense was  
12 committed;

13 (B) The defendant was merely an accomplice to the offense;  
14 and

15 (C) The offense was committed on or after July 31, 2007.  
16

17 SECTION 70. Arkansas Code § 16-90-122(b), regarding post-conviction  
18 release of offenders, is amended to read as follows:

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

22 (1) Class Y felony offense listed in ~~§ 16-93-611~~ § 16-93-620; or

23 (2) Felony sex offense listed in the definition of "sex offense"  
24 in § 12-12-903.  
25

26 SECTION 71. Arkansas Code § 16-90-802(d), regarding powers and duties  
27 of the Arkansas Sentencing Commission, is amended to read as follows:

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

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

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

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

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

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

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

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

13           (3) The commission may review and make recommendations for  
14 revision of the Community Punishment Act, § 16-93-1201 et seq., target group  
15 to the General Assembly such that nonviolent offenses and offenders are  
16 routinely handled in community punishment programs;

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

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

21           (C) The commission shall monitor compliance with  
22 sentencing standards, assess their impact on the correctional resources of  
23 the state with the assistance of the board and determine if the standards  
24 further the adopted sentencing policy goals of the state;

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

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

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

35           (7)(A)(i) All courts having criminal jurisdiction of felony  
36 crimes shall provide to the commission in a timely manner all information

1 deemed necessary by the commission.

2 (ii) Such information shall be in the form  
3 determined necessary by the commission.

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

10 (C) The commission may coordinate its data collection with  
11 the Administrative Office of the Courts, the Arkansas Crime Information  
12 Center, the various circuit clerks of the state, and the various state and  
13 local correctional agencies;

14 (8) ~~Pursuant to~~ Under its duties outlined in this section, the  
15 commission shall be a criminal justice agency, as defined in § 12-12-1001(7),  
16 as its powers and duties include:

17 (A) Determining transfer eligibility;

18 (B) Gathering, analyzing, and disseminating criminal  
19 history information as it relates to sentencing practices, dispositions, and  
20 release criteria; and

21 (C) Determining the appropriate use of correctional and  
22 rehabilitative resources of the state;

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

26 (B) The report shall include:

27 (i) Data collected from each county; and

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

30 (a) Sentences to the Department of Correction  
31 and Department of Community Correction;

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

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

36 (d) The average number of months above the



1 recommended sentence for those sentences described in subdivision  
2 (d)(9)(B)(ii)(c).

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

5 (10) Prepare and conduct annual continuing legal education  
6 seminars regarding the sentencing guidelines to be presented to judges,  
7 prosecuting attorneys and their deputies, and public defenders and their  
8 deputies, as so required; and

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

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

14 (2) The placement decision;

15 (3) Sentence length;

16 (4) Any departure from the sentencing guidelines on  
17 placement and sentence length;

18 (5) The number of months above or below the  
19 presumptive sentence;

20 (6) Justification for the departure; and

21 (7) A signature space for the judge, defense  
22 counsel, and the prosecuting attorney to sign off on the contents of the  
23 form:

24 (i) Sentencing judge;

25 (ii) Prosecuting attorney; and

26 (iii) Defense counsel.

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

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

31 (2) Data from the forms shall be collected and  
32 submitted to the Chairs of the House Judiciary Committee and the Senate  
33 Judiciary Committee.

34  
35 SECTION 72. Arkansas Code § 16-90-802(g), regarding the staffing of  
36 the Arkansas Sentencing Commission, is amended to read as follows:

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

5 (2) The executive director shall ensure that appropriate  
 6 budgetary measures are taken to employ enough staff and to purchase the  
 7 technology needed to compile and process sentencing data from all judicial  
 8 districts in a timely manner.

9  
 10 SECTION 73. Arkansas Code § 16-90-901(a)(1), regarding definitions in  
 11 the criminal expungement statute, is amended to read as follows:

12 (a)(1) As used in §§ 5-64-407, ~~5-4-311~~, 16-90-601, 16-90-602, 16-90-  
 13 605, 16-93-301 – 16-93-303, 16-93-314, and 16-93-1207, “expunge” shall mean  
 14 that the record or records in question shall be sealed, sequestered, and  
 15 treated as confidential in accordance with the procedures established by this  
 16 subchapter.

17  
 18 SECTION 74. Arkansas Code § 16-90-1201(a), regarding criminal record  
 19 expungement, is amended to read as follows:

20 (a) The record of a felony offense for possession of a controlled  
 21 substance or counterfeit substance in violation of § 5-64-419, § 5-64-431, or  
 22 the former § 5-64-401(c) shall be expunged ~~pursuant to~~ under this section.

23  
 24 SECTION 75. Arkansas Code Title 16, Chapter 90 is amended to create a  
 25 new subchapter to read as follows:

26 Subchapter 13 – Earned Discharge and Completion of Sentence

27 16-90-1301. Scope.

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

30  
 31 16-90-1302. Applicable felonies.

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

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

35 (A) An offense for which sex offender registration is  
 36 required under the Sex Offender Registration Act of 1997, § 12-12-901 et

1 seq.;

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

3 (C) Kidnapping, § 5-11-102;

4 (D) Manslaughter, § 5-10-104; or

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

6 (2) All Class A controlled substance offenses, § 5-64-401 et

7 seq.

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

10  
11 16-90-1303. Procedure.

12 (a) If the person is incarcerated for an eligible felony, whether by  
13 an immediate commitment or after a person's probation is revoked, and after  
14 he or she is transferred by the Parole Board to parole, or if he or she is  
15 placed on probation, he or she is immediately eligible to begin earning daily  
16 credits that shall count toward reducing the number of days he or she is  
17 otherwise required to serve until he or she has completed the sentence.

18 (b)(1) Credits equal to thirty (30) days per month for every month  
19 that the offender complies with court-ordered conditions and a set of pre-  
20 determined criteria established by the Department of Community Correction in  
21 consultation with judges, prosecuting attorneys, and defense counsel shall  
22 accrue while the person is on parole or probation.

23 (2) The Department of Community Correction shall calculate the  
24 number of days the person has remaining to serve on parole or probation  
25 before that person has completed his or her sentence.

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

28 (c)(1)(A) The Department of Community Correction shall have sole  
29 discretion to forfeit any credits earned under this subchapter unless  
30 otherwise provided for in this section.

31 (B) The awarding or forfeiting of any credits earned under  
32 this subchapter is not subject to appeal or judicial review.

33 (2) A person who is convicted of another felony offense while on  
34 parole or probation may forfeit any credits earned under this subchapter.

35  
36 16-90-1304. Application.

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

5       (b)(1) No less than seven (7) days before the discharge date the  
6 Department of Community Correction shall submit the earned discharge  
7 application indicating the completion of the sentence under this subchapter  
8 to:

9               (A) The prosecuting attorney; and

10              (B) The Parole Board.

11       (2) The prosecuting attorney or the Parole Board may file an  
12 objection to the earned discharge application within three (3) days of the  
13 submission of the application if there is evidence of criminal activity  
14 warranting the forfeiture of earned-discharge credit.

15       (3) If an objection under subsection (b)(2) of this section is  
16 lodged, the Department of Community Correction shall immediately suspend the  
17 discharge of the sentence pending a review of the evidence contained in the  
18 objection.

19       (4) A review shall be conducted within three (3) days of the  
20 filing of the objection which will be conducted by the Director of the  
21 Department of Community Correction or his designee.

22       (5)(A) Upon the request of the prosecuting attorney or the  
23 Parole Board, the director shall consider the evidence of criminal conduct  
24 against the person based solely on the information contained in the  
25 objection.

26       (B) The director shall determine, based on a preponderance  
27 of the evidence, whether the person should not be discharged from the  
28 sentence because if the information contained in the objection had been known  
29 to the Department of Community Correction, the department would have ordered  
30 the forfeiture of any of the discharge credit earned to that point or if  
31 insufficient evidence exists that would warrant the forfeiture of discharge  
32 credit.

33       (C) If the director finds sufficient evidence warranting a  
34 forfeiture of discharge credits, he or she shall make the necessary  
35 forfeiture of earned discharge credit appropriate for the type of misconduct  
36 asserted in the objection.

1                   (D)(1) If the director does not find sufficient evidence  
2 exists that warrants forfeiture of discharge credits, he or she shall  
3 discharge the person immediately if the date upon which the completion of the  
4 sentence occurred has passed.

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

8                   (6) An appeal may not be taken by either party from the  
9 director's decision.

10  
11           16-90-1305. Notice and effect.

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

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

16           (c) A person who earns discharge and completion of his or her sentence  
17 under this subchapter is considered as having completed his or her sentence  
18 in full and is not subject to parole or probation revocation for those  
19 convictions.

20  
21           SECTION 76. Arkansas Code § 16-91-110(b)(3), regarding bail bonds on  
22 appeal, is amended to read as follows:

23           (3) When a criminal defendant has been found guilty, pleaded guilty,  
24 or pleaded nolo contendere to a criminal offense of murder in the first  
25 degree, § 5-10-102, rape, § 5-14-103, aggravated robbery, § 5-12-103, or  
26 causing a catastrophe, § 5-38-202(a), or the criminal offense of kidnapping,  
27 § 5-11-102, or arson, § 5-38-301, when classified as Class Y felonies, or  
28 manufacturing methamphetamine in violation of § 5-64-421 or the former § 5-  
29 64-401, and is sentenced to death or a term of imprisonment, the court shall  
30 not release the defendant on bail or otherwise pending appeal or for any  
31 reason.

32  
33           SECTION 77. Arkansas Code § 16-93-101 is amended to read as follows:  
34           16-93-101. Definitions.

35           As used in this act:

36           (1) Case plan" means an individualized accountability and behavior

1 change strategy for supervised individuals that:

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

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

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

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

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

16 (A) Antisocial personality;

17 (B) Criminal thinking;

18 (C) Criminal associates;

19 (D) Dysfunctional family;

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

21 (F) Substance abuse.

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

25 (4) "Intermediate sanctions" means a non-prison accountability measure  
26 imposed on an offender in response to a violation of supervision conditions.

27 Such measures may include without limitation:

28 (A) The use of electronic supervision tools;

29 (B) Drug and alcohol testing or monitoring;

30 (C) Day or evening reporting;

31 (D) Restitution;

32 (E) Forfeiture of earned discharge credits;

33 (F) Rehabilitative interventions such as substance abuse and  
34 mental health treatment;

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

36 (H) Community service or community work project;

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

2           (J) Short-term, intermittent incarceration.

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

8           (6) "Parole" means the release of the prisoner into the community by  
9 the Parole Board prior to the expiration of his or her term, subject to  
10 conditions imposed by the board and to the supervision of the Department of  
11 Community Correction. When a court or other authority has filed a warrant  
12 against the prisoner, the board may release him or her on parole to answer  
13 the warrant of the court or authority; and

14           ~~(2)~~(7) "Probation" means a procedure under which a defendant, found  
15 guilty upon verdict or plea, is released by the court without imprisonment,  
16 subject to conditions imposed by the court and subject to the supervision of  
17 the Department of Community Correction, but only if the supervision is  
18 requested in writing by the court;

19           (8) "Recidivism" means the return to incarceration in an Arkansas  
20 Department of Correction or Department of Community Correction community  
21 correctional facility other than a technical violator program within a three-  
22 year period;

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

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

27           (B) Treatment options may include without limitation:

28                   (i) Community-based programs that are consistent with  
29 evidence-based practices;

30                   (ii) Cognitive behavioral programs;

31                   (iii) Inpatient and outpatient substance abuse and mental  
32 health programs; and

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

35           (11) "Validated risk-needs assessment" means a determination of a  
36 person's risk to reoffend and the needs that, when addressed, reduce the risk

1 to reoffend through the use of an actuarial assessment tool that assesses the  
2 dynamic and static factors that drive criminal behavior.

3  
4 SECTION 78. Arkansas Code § 16-93-104(a), regarding the supervision  
5 fees for a person on probation or parole, is amended to read as follows:

6 (a)(1) Any offender on probation or parole under supervision of the  
7 Department of Community Correction shall pay to the department a monthly fee  
8 as determined by the Board of Corrections of thirty-five dollars (\$35.00).

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

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

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

18 (ii) The Board of Correction shall promulgate  
19 regulations for the accounting and distribution of the Best Practices Fund to  
20 ensure that:

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

25 (b) The direct services may be provided to the  
26 Department of Community Correction, the Department of Human Services, and  
27 community-based vendors meeting these criteria and serving offenders being  
28 supervised by the Department of Community Correction; and

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

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

35  
36 SECTION 79. Arkansas Code § 16-93-201 is amended to read as follows:



1 16-93-201. Creation – Members – Qualifications and training.

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

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

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

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

14 (i) Parole supervision;

15 (ii) Probation supervision;

16 (iii) Corrections;

17 (iv) Criminal justice;

18 (v) Law;

19 (vi) Law enforcement;

20 (vii) Psychology;

21 (viii) Psychiatry;

22 (ix) Sociology;

23 (x) Social work; or

24 (xi) Other related field.

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

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

34 (B) All members shall complete annual training developed  
35 in compliance with guidelines from the National Institute of Corrections, the  
36 Association of Paroling Authorities International, or the American Probation

1 and Parole Association.

2 (C) Training components shall include an emphasis on the  
3 following subjects:

4 (i) Data-driven decision making;

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

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

8 (iii) Stakeholder collaboration; and

9 (iv) Recidivism reduction.

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

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

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

16  
17 SECTION 80. Arkansas Code § 16-93-206 is amended to read as follows:

18 16-93-206. ~~Board procedures~~ Parole revocation review - Jurisdiction.

19 ~~(a)(1) For those persons eligible for parole, the Parole Board shall~~  
20 ~~retain the power to determine which persons shall be placed on parole and to~~  
21 ~~fix the time and conditions of the parole.~~

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

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

25 ~~(4) The Parole Board retains the right to formulate all~~  
26 ~~policies, rules, and regulations regarding parole, including amendments to~~  
27 ~~those previously formulated by the State Board of Parole and Community~~  
28 ~~Rehabilitation.~~

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

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

1                   ~~(i) Level of supervision;~~  
 2                   ~~(ii) Economic fee sanction;~~  
 3                   ~~(iii) Treatment program; and~~  
 4                   ~~(iv) Other conditions relevant to the individual~~  
 5 ~~under review.~~

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

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

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

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

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

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

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

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

24                   ~~(b) Upon completion of the course of action~~  
 25 ~~determined by the Parole Board, after final review of the inmate's file to~~  
 26 ~~ensure successful completion, the Parole Board shall authorize the inmate's~~  
 27 ~~transfer to the Department of Community Correction in accordance with~~  
 28 ~~administrative policies and procedures governing a transfer and subject to~~  
 29 ~~conditions attached to the transfer.~~

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

34                   ~~(4)(A) The course of action required by the Parole Board shall~~  
 35 ~~not be outside the current resources of the Department of Correction, nor~~  
 36 ~~shall conditions set be outside the current resources of the Department of~~

1 ~~Community Correction.~~

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

5 ~~(c)(1) A person who commits the following felonies on or after January 1,~~  
 6 ~~1994, shall be eligible to be considered for discretionary transfer to the~~  
 7 ~~Department of Community Correction by the Parole Board after having served~~  
 8 ~~one third (1/3) or one half (1/2) of his or her sentence, with credit for~~  
 9 ~~meritorious good time, depending on the seriousness determination made by the~~  
 10 ~~Arkansas Sentencing Commission, or one half (1/2) of the time to which his or~~  
 11 ~~her sentence is commuted by executive clemency, with credit for meritorious~~  
 12 ~~good time.~~

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

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

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

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

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

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

19 ~~(i) Kidnapping, § 5-11-102;~~

20 ~~(ii) Rape, § 5-14-103;~~

21 ~~(iii) Aggravated robbery, § 5-12-103; or~~

22 ~~(iv) Causing a catastrophe, § 5-38-202(a);~~

23 ~~(G) Engaging in a continuing criminal enterprise, § 5-64-~~  
 24 ~~405; or~~

25 ~~(H) Simultaneous possession of drugs and firearms, § 5-74-~~  
 26 ~~106.~~

27 ~~(2)(A) The transfer of an offender convicted of an above-listed~~  
 28 ~~offense is not automatic.~~

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

34 ~~(C) After the Parole Board has fully considered and denied~~  
 35 ~~the transfer of an offender sentenced for committing an offense listed in~~  
 36 ~~subdivision (c)(1) of this section, the Parole Board may delay any~~

1 reconsideration of the transfer for a maximum period of two (2) years.

2           (3) Notification of the court, prosecutor, sheriff, and the  
3 victim or the victim's next of kin shall follow the procedures set forth  
4 below.

5           (A)(i) Before the Parole Board shall grant any transfer,  
6 the Parole Board shall solicit the written or oral recommendations of the  
7 committing court, the prosecuting attorney, and the sheriff of the county  
8 from which the inmate was committed.

9           (ii) If the person whose transfer is being  
10 considered by the Parole Board was convicted of one (1) of the Class Y  
11 felonies enumerated in subdivision (c)(1) of this section, the Parole Board  
12 shall also notify the victim of the crime or the victim's next of kin of the  
13 transfer hearing and shall solicit written or oral recommendations of the  
14 victim or his or her next of kin regarding the granting of the transfer  
15 unless the prosecuting attorney has notified the Parole Board at the time of  
16 commitment of the prisoner that the victim or his or her next of kin does not  
17 want to be notified of future transfer hearings.

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

21           (iv) When soliciting recommendations from a victim  
22 of a crime, the Parole Board shall notify the victim or his or her next of  
23 kin of the date, time, and place of the transfer hearing.

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

28           (ii) Nothing herein shall be construed as  
29 prohibiting the Parole Board from conducting transfer hearings in two (2)  
30 sessions, one (1) at the place of the inmate's incarceration for interviews  
31 with the inmate, the inmate's witnesses, and correctional personnel, and the  
32 second session for victims and relatives of victims as set out in subdivision  
33 (c)(3)(B)(i) of this section.

34           (C)(i) At the time that any person eligible under  
35 subdivision (c)(1) of this section is transferred by the Parole Board, the  
36 Department of Community Correction shall give written notice of the granting

1 of the transfer to the sheriff, the committing court, and the chief of police  
2 of each city of the first class of the county from which the person was  
3 sentenced.

4                   (ii) If the person is transferred to a county other  
5 than that from which he or she was committed, the Parole Board shall give  
6 notice to the chief of police or marshal of the city to which he or she is  
7 transferred, to the chief of police of each city of the first class and the  
8 sheriff of the county to which he or she is transferred, and to the sheriff  
9 of the county from which the person was committed; and

10                   (D)(i) It shall be the responsibility of the prosecuting  
11 attorney of the county from which the inmate was committed to notify the  
12 Parole Board at the time of commitment of the desire of the victim or his or  
13 her next of kin to be notified of any future transfer hearings and to forward  
14 to the Parole Board the last known address and telephone number of the victim  
15 or his or her next of kin.

16                   (ii) It shall be the responsibility of the victim or  
17 his or her next of kin to notify the Parole Board of any change in address or  
18 telephone number.

19                   (iii) It shall be the responsibility of the victim  
20 or his or her next of kin to notify the Parole Board after the date of  
21 commitment of any change in regard to the desire to be notified of any future  
22 transfer hearings.

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

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

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

33                   (3)(A) Victim input to the Parole Board shall be limited to oral  
34 or written recommendations on conditions relevant to the offender under  
35 review for transfer.

36                   (B) The recommendations shall not be binding on the Parole

1 Board, but shall be given due consideration within the resources available  
2 for transfer.

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

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

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

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

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

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

20  
21 SECTION 81. Arkansas Code § 16-93-210 is amended to read as follows:

22 16-93-210. ~~Annual~~ Monthly performance report on parole applications and  
23 outcome.

24 (a)(1) ~~Beginning July 31, 2003, and on July 31 of each year~~  
25 ~~thereafter, October 1, 2011,~~ the Parole Board shall submit ~~an annual a~~  
26 monthly report to the Legislative Council, the Board of Corrections, the  
27 Governor, and the Commission on Disparity in Sentencing showing the number of  
28 persons who make application for parole and those who are granted or denied  
29 parole during the ~~fiscal year~~ previous month for each criminal offense  
30 classification.

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

33 (3) The report shall include the reason for each denial of  
34 parole, the results of the risk-needs assessment, and the course of action  
35 that accompanies each denial pursuant to § 16-93-206(b)(2)(B)(ii).

36 (b) The board shall cooperate with and upon request make presentations

1 and provide various reports, to the extent the board's budget will allow, to  
 2 the Legislative Council concerning board policy and criteria on discretionary  
 3 offender programs and services.

4  
 5 SECTION 82. Arkansas Code Title 16, Chapter 93, Subchapter 3 is  
 6 amended to read as follows:

7 Subchapter 3 – Probation — ~~First Offenders~~ and Suspended Imposition of  
 8 Sentence

9 16-93-301. ~~Definition~~ Definitions.

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

11 (1) the procedure, effect, and definition of “expungement” shall be in  
 12 accordance with that established in § 16-90-901 et seq “Expungement” means  
 13 the procedure and effect as defined in § 16-90-901(a); and

14 (2) “Suspended imposition of sentence” means a procedure whereby a  
 15 defendant who is found guilty of or pleads guilty or nolo contendere to an  
 16 offense is released by the court without pronouncement of sentence and  
 17 without supervision.

18  
 19 16-93-302. Probation – First time offenders – Penalties.

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

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

28 (b)(1) Any person charged under ~~the provisions of~~ this section and §§  
 29 16-93-301 and 16-93-303 with keeping the confidential records of first  
 30 offenders, as provided in § 16-93-301, who divulges any information contained  
 31 in the records to any person or agency other than a law enforcement officer  
 32 or judicial officer is guilty of a violation and upon conviction is subject  
 33 to a fine of not more than five hundred dollars (\$500).

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

35  
 36 16-93-303. Probation – First time offenders – Procedure.



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

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

14 (B) However, no person who is found guilty of or pleads  
15 guilty or nolo contendere to a sexual offense as defined by § 5-14-101 et  
16 seq. and §§ 5-26-202, 5-27-602, 5-27-603, and 5-27-605 in which the victim  
17 was under eighteen (18) years of age shall be eligible for expungement or  
18 sealing of the record under this subchapter.

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

21 (3) Nothing in this subsection shall require or compel any court  
22 of this state to establish first offender procedures as provided in §§ 16-93-  
23 301 – 16-93-303, nor shall any defendant be availed the benefit of §§ 16-93-  
24 301 – 16-93-303 as a matter of right.

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

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

34 (1) Application of any law prohibiting possession of a firearm  
35 by certain persons;

36 (2) A determination of habitual offender status;

1 (3) A determination of criminal history;  
2 (4) A determination of criminal history scores;  
3 (5) Sentencing; and  
4 (6) A purpose of impeachment as a witness under Rule 609 of the  
5 Arkansas Rules of Evidence.

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

9 (1) A determination of habitual offender status;  
10 (2) A determination of criminal history;  
11 (3) A determination of criminal history scores;  
12 (4) Sentencing; and  
13 (5) A purpose of impeachment as a witness under Rule 609 of the  
14 Arkansas Rules of Evidence.

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

18  
19 16-93-304. Probation – First-time offenders – Arkansas Crime  
20 Information Center.

21 (a) All district court judges and circuit court judges shall  
22 immediately report to the Arkansas Crime Information Center, in the form  
23 prescribed by the center, all probations of criminal defendants under §§ 16-  
24 93-301 – 16-93-303.

25 (b) Prior to granting probation to a criminal defendant under §§ 16-  
26 93-301 – 16-93-303, the court shall query the center to determine whether the  
27 criminal defendant has previously been granted probation under the provisions  
28 of §§ 16-93-301 – 16-93-303.

29 (c) If the center determines that an individual has utilized §§ 16-93-  
30 301 – 16-93-303 more than one (1) time, the center shall notify the last  
31 sentencing judge of that fact.

32  
33 16-93-305. Probation – First time offenders – Sex offender may not  
34 reside with minor victim.

35 (a) Whenever an accused who enters a plea of guilty or nolo contendere  
36 prior to an adjudication of guilt for any sexual offense defined in § 5-14-

1 101 et seq. or incest as defined in § 5-26-202 for a sexual offense or incest  
2 perpetrated against a minor is eligible for probation under procedures  
3 defined in § 16-93-303 or any other provision of law, as a condition of  
4 granting probation the court shall prohibit the accused, upon release, from  
5 residing in a residence with any minor unless the court makes a specific  
6 finding that the accused poses no danger to the minors residing in the  
7 residence.

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

10  
11 16-93-306. Probation generally – Supervision.

12 (a)(1) The Director of the Department of Community Correction shall  
13 establish written policies and procedures governing the supervision of  
14 probationers designed to enhance public safety and to assist the probationers  
15 in integrating into society.

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

18 (B) Decisions shall target the probationer’s criminal risk  
19 factors with appropriate supervision and treatment.

20 (b) A probation officer shall:

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

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

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

32 (4) Stay informed of the probationer’s conduct and condition  
33 through visitation, required reporting, or other methods, and report to the  
34 sentencing court of that information upon request;

35 (5) Use practicable and suitable methods that are consistent  
36 with evidence-based practices to aid and encourage a probationer to improve

1 his or her conduct and condition and to reduce the risk of recidivism;

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

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

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

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

13 (c)(1) The department shall allocate resources, including the  
14 assignment of probation officers, to focus on moderate-risk and high-risk  
15 offenders as determined by the actuarial assessment provided in subdivision  
16 (b)(5) of this section.

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

20 (d)(1) The department shall have the authority to sanction  
21 probationers administratively without utilizing the revocation process under  
22 § 16-93-307.

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

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

28 (3) Intermediate sanctions shall include without limitation:

29 (A) Day reporting;

30 (B) Community service;

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

32 (D) Increased monitoring including electronic monitoring  
33 and home confinement;

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

36 (ii) Incarceration as an intermediate sanction shall

1 not be used more than ten (10) times, and no probationer shall accumulate  
2 more than thirty (30) days incarceration as an intermediate sanction before  
3 the probation officer shall file violate the person's probation under § 16-  
4 93-307.

5  
6 16-93-307. Probation generally – Revocation hearings.

7 (a)(1) A defendant arrested for violation of suspension or probation  
8 is entitled to a preliminary hearing to determine whether there is reasonable  
9 cause to believe that he or she has violated a condition of suspension or  
10 probation.

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

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

15 (A) Time and place of the preliminary hearing;

16 (B) Purpose of the preliminary hearing; and

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

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

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

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

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

1           (6) The court conducting the preliminary hearing shall prepare  
2 and furnish to the court that suspended imposition of sentence on the  
3 defendant or placed him or her on probation a summary of the preliminary  
4 hearing, including the responses of the defendant and the substance of the  
5 documents and evidence given in support of revocation.

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

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

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

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

14                   (B) Purpose of the revocation hearing; and

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

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

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

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

21                   (C) Be represented by counsel.

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

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

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

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

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

36                   (1) The defendant waives the preliminary hearing;

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

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

7  
8           16-93-308. Probation generally – Revocation.

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

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

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

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

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

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

29           (f) A court may revoke a suspension or probation subsequent to the  
30 expiration of the period of suspension or probation if before expiration of  
31 the period:

32           (1) The defendant is arrested for violation of suspension or  
33 probation;

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

36           (3) A petition to revoke the defendant's suspension or probation

1 has been filed if a warrant is issued for the defendant's arrest within  
2 thirty (30) days of the date of filing the petition; or

3 (4) The defendant has been:

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

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

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

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

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

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

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

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

30 (B) As used in this section a "good faith effort" means a  
31 person:

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

35 (ii) Is registered for employment and enrolled and  
36 participating in an employment-training program with the purpose of obtaining



1 gainful employment.

2  
3 16-93-309. Probation generally – Revocation hearing – Sentence  
4 alternatives.

5 (a) Following a revocation hearing held under § 5-4-310 and in which a  
6 defendant has been found guilty or has entered a plea of guilty or nolo  
7 contendere, the court may:

8 (1) Continue the period of suspension of imposition of sentence  
9 or continue the period of probation;

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

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

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

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

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

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

22 (2) Sentencing the defendant to incarceration in the Department  
23 of Correction.

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

28  
29 16-93-310. Probation generally – Revocation – Community correction  
30 program.

31 (a) When a person sentenced under a community correction program, § 5-  
32 4-312, violates any terms or conditions of his or her sentence or term of  
33 probation, revocation of the sentence or term of probation shall be  
34 consistent with the procedures under this subchapter.

35 (b) Upon revocation, the court of jurisdiction shall determine whether  
36 the offender shall remain under the jurisdiction of the court and be assigned

1 to a more restrictive community correction program, facility, or institution  
2 for a period of time or committed to the Department of Community Correction.

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

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

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

13 (ii) That the initial placement in the Department of  
14 Community Correction is conditioned upon the offender's continuing  
15 eligibility for Department of Community Correction placement and the  
16 offender's compliance with all applicable rules and regulations established  
17 by the board for community correction programs.

18 (B) Post-prison supervision shall accompany and follow  
19 programming when appropriate.

20  
21 16-93-311. Probation generally – Restitution.

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

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

28 (2) Either:

29 (A) Extend the probation period as the court deems  
30 necessary; or

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

32  
33 16-93-312. Probation generally – Modification.

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

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

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

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

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

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

8  
9           16-93-313. Probation generally – Transfer of jurisdiction.

10          (a) If a defendant during a period of probation goes from a county  
11 where he or she is being supervised to another county, jurisdiction over the  
12 defendant may be transferred in the discretion of the supervising court to a  
13 court of comparable jurisdiction in the other county if the court in the  
14 other county concurs.

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

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

22  
23          16-93-314. Probation generally – Discharge.

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

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

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

35                 (2) This subsection does not apply if:

36                         (A) The person applying for discharge has been convicted

1 of a sexual offense as defined by § 5-14-101 et seq.; and

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

3  
4 SECTION 83. Arkansas Code § 16-93-402 is repealed.

5 ~~16-93-402. Probation officers.~~

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

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

12 ~~(b)(1) Whenever, during the period of his or her probation, a~~  
13 ~~probationer placed on probation goes from the county in which he or she is~~  
14 ~~being supervised to another county, jurisdiction over him or her may be~~  
15 ~~transferred, in the discretion of the court, from the court for the county~~  
16 ~~from which he or she goes to the court for the other county, with the~~  
17 ~~concurrence of the latter court.~~

18 ~~(2)(A) The court for the county to which jurisdiction is~~  
19 ~~transferred shall have all power with respect to the probationer that was~~  
20 ~~previously possessed by the court for the county from which the transfer was~~  
21 ~~made.~~

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

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

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

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

36 ~~(4) As speedily as possible, the probationer shall be taken~~

1 ~~before the court having jurisdiction over him or her.~~

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

5  
 6 SECTION 84. Arkansas Code § 16-93-605 is repealed.

7 ~~16-93-605. Felonies committed on or after April 1, 1983— Purpose and~~  
 8 ~~construction of sections.~~

9 ~~(a) It is the purpose and intent of this section and §§ 16-93-606—~~  
 10 ~~16-93-608 to establish parole eligibility for persons convicted of felonies~~  
 11 ~~committed on or after April 1, 1983.~~

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

15  
 16 SECTION 85. Arkansas Code § 16-93-606 is amended to read as follows:

17 ~~16-93-606. Felonies committed on or after April 1, 1983—~~

18 Classification of inmates.

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

21 (b) For the purposes of former § 16-93-607, as repealed on the  
 22 effective date of this act, and §§ 16-93-613 – 16-93-616, 16-93-619, and 16-  
 23 93-620, inmates shall be classified as follows:

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

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

1 classified;

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

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

16

17 SECTION 86. Arkansas Code § 16-93-607 is repealed.

18 ~~16-93-607. Felonies committed on or after April 1, 1983—Parole~~  
19 ~~eligibility.~~

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

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

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

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

36 ~~(2) An inmate classified as a first offender under § 16-93-606,~~

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

11 ~~(3) An inmate classified as a second offender under § 16-93-606~~  
12 ~~and one who pleads guilty or was convicted of a Class Y felony, upon entering~~  
13 ~~a correctional institution in this state under sentence from a circuit court,~~  
14 ~~is not eligible for release on parole until a minimum of one half (1/2) of his~~  
15 ~~or her sentence shall have been served, with credit for good time allowances,~~  
16 ~~or one half (1/2) of the time to which the sentence is commuted by executive~~  
17 ~~clemency is served, with credit for good time allowances;~~

18 ~~(4) An inmate classified as a third offender under § 16-93-606,~~  
19 ~~upon entering a correctional institution in this state under sentence from a~~  
20 ~~circuit court, is not eligible for release on parole until a minimum of~~  
21 ~~three fourths (3/4) of his or her sentence shall have been served, with credit~~  
22 ~~for good time allowances, or three fourths (3/4) of the time to which the~~  
23 ~~sentence is commuted by executive clemency shall have been served, with~~  
24 ~~credit for good time allowances; and~~

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

29 ~~(d) Any person under the age of twenty one (21) years who is first~~  
30 ~~convicted of a felony and committed to the first offender penal institution~~  
31 ~~or to the Department of Correction for a term of years is eligible for parole~~  
32 ~~at any time unless a minimum time to be served is imposed consisting of not~~  
33 ~~more than one third (1/3) of the total time sentenced. In the event the~~  
34 ~~individual is sentenced to a minimum time to be served, he or she is eligible~~  
35 ~~for release on parole after serving the minimum time prescribed, with credit~~  
36 ~~for good time allowances, and for commutation by the exercise of executive~~

1 ~~elemeney.~~

2 ~~(e)(1) When any convicted felon, while on parole, is convicted of~~  
 3 ~~another felony, the felon is to be committed to the Department of Correction~~  
 4 ~~to serve the remainder of his or her original sentence, including any portion~~  
 5 ~~suspended, with credit for good time allowances. Upon conviction for the~~  
 6 ~~subsequent felony, the court shall require the sentence for the subsequent~~  
 7 ~~felony to be served consecutively with the sentence for the previous felony.~~

8 ~~(2) Any person found guilty of a felony and placed on probation~~  
 9 ~~or suspended sentence therefor who is subsequently found guilty of another~~  
 10 ~~felony committed while on probation or suspended sentence is to be committed~~  
 11 ~~to the Department of Correction to serve the remainder of his or her~~  
 12 ~~suspended sentence plus the sentence imposed for the subsequent felony. The~~  
 13 ~~sentence imposed for the subsequent felony is to be served consecutively with~~  
 14 ~~the remainder of the suspended sentence.~~

15 ~~(f) For parole eligibility purposes, consecutive sentences by~~  
 16 ~~one (1) or more courts or for one (1) or more counts are to be considered as~~  
 17 ~~a single commitment reflecting the cumulative sentence to be served.~~

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

21  
 22 SECTION 87. Arkansas Code § 16-93-608 is repealed.

23 ~~16-93-608. Class C or Class D felonies committed on or after April 1,~~  
 24 ~~1983.~~

25 ~~A person who commits a Class C felony or Class D felony on or after~~  
 26 ~~April 1, 1983, and who is incarcerated therefor is eligible for release on~~  
 27 ~~parole after having served one third (1/3) of his or her sentence, with~~  
 28 ~~credit for good time allowances, or one third (1/3) of the time to which his~~  
 29 ~~or her sentence is commuted by executive clemency, with credit for good time~~  
 30 ~~allowances.~~

31  
 32 SECTION 88. Arkansas Code § 16-93-611 is repealed.

33 ~~16-93-611. Class Y felonies.~~

34 ~~(a)(1) Notwithstanding any law allowing the award of meritorious good~~  
 35 ~~time or any other law to the contrary, any person who is found guilty of or~~  
 36 ~~pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(G) of this~~



1 ~~section shall not be eligible for parole or community punishment transfer,~~  
 2 ~~except as provided in subdivision (a)(3) or subsection (c) of this section,~~  
 3 ~~until the person serves seventy percent (70%) of the term of imprisonment to~~  
 4 ~~which the person is sentenced, including a sentence prescribed under § 5-4-~~  
 5 ~~501.~~

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

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

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

9 ~~(D) Rape, § 5-14-103;~~

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

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

12 ~~(G) Possession of drug paraphernalia with the intent to~~  
 13 ~~manufacture methamphetamine, § 5-64-403(e)(5).~~

14 ~~(2)(A) The seventy percent (70%) provision of subdivision (a)(1)~~  
 15 ~~of this section has no application to any person who is found guilty of or~~  
 16 ~~pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102,~~  
 17 ~~regardless of the date of the offense.~~

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

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

27 ~~(ii) Regardless of the date of the offense, the~~  
 28 ~~seventy percent provision under subdivision (a)(1) of this section may~~  
 29 ~~include credit for the award of meritorious good time under § 12-29-202 to~~  
 30 ~~any person who is found guilty of or pleads guilty or nolo contendere to~~  
 31 ~~manufacture of methamphetamine under § 5-64-401(a)(1) or possession of drug~~  
 32 ~~paraphernalia with the intent to manufacture methamphetamine under § 5-64-~~  
 33 ~~403(e)(5), unless the person is sentenced to a term of life imprisonment.~~

34 ~~(B) In no event shall the time served by any person who is~~  
 35 ~~found guilty of or pleads guilty or nolo contendere to manufacture of~~  
 36 ~~methamphetamine under § 5-64-401(a)(1) or possession of drug paraphernalia~~

1 with the intent to manufacture methamphetamine under § 5-64-403(e)(5) be  
2 reduced to less than fifty percent (50%) of the person's original sentence.

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

9 ~~(B) The notice shall contain the following language in 12-~~  
10 ~~point capital letters bold type: INMATE SENTENCED UNDER ARKANSAS CODE § 16-~~  
11 ~~93-611.~~

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

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

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

19 ~~(d) In no event shall the awarding of meritorious good time under §~~  
20 ~~12-29-201 or § 12-29-202 be applicable to persons sentenced under~~  
21 ~~subdivisions (a)(1)(A)-(E) of this section.~~

22  
23 SECTION 89. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
24 amended to add a new section to read as follows:

25 16-93-612. Parole eligibility - Date of conviction.

26 A person's parole eligibility shall be determined by the laws in effect  
27 at the time the person was convicted of the crime for which he or she is or  
28 was serving a sentence in the Department of Correction.

29  
30 SECTION 90. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
31 amended to add a new section to read as follows:

32 16-93-613. Parole eligibility - Class Y, Class A, or Class B  
33 felonies.

34 (a) A person who commits a Class Y, Class A, or Class B felony,  
35 except those drug offenses addressed in § 16-93-619 or those Class Y felonies  
36 addressed in § 16-93-620 or § 16-93-621, and who shall be convicted and

1 incarcerated for that felony, shall be eligible for release on parole as  
2 follows:

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

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

9 (B) Upon commutation, the inmate is eligible for release  
10 on parole as provided in this subchapter;

11 (3)(A) An inmate classified as a first offender under § 16-93-  
12 606, except one under the age of twenty-one (21) years as described in  
13 subsection (b) of this section and except one who pleads guilty or has been  
14 convicted of a Class Y felony, upon entering a correctional institution in  
15 this state under sentence from a circuit court, is not eligible for release  
16 on parole until a minimum of one-third (1/3) of the time to which the  
17 sentence is commuted by executive clemency is served, with credit for good-  
18 time allowances.

19 (B) However, if the trier of fact determines that a deadly  
20 weapon was used in the commission of the crime, a first offender twenty-one  
21 (21) years of age or older is not eligible for release on parole until a  
22 minimum of one-half ( $\frac{1}{2}$ ) of the sentence is served, with credit for good-time  
23 allowances;

24 (b)(1) Any person under the age of twenty-one (21) years who is first  
25 convicted of a Class Y, Class A, or Class B felony and committed to the first  
26 offender penal institution or to the Department of Correction for a term of  
27 years is eligible for parole at any time unless a minimum time to be served  
28 is imposed consisting of not more than one-third (1/3) of the total time  
29 sentenced.

30 (2) In the event the individual is sentenced to a minimum time  
31 to be served, he or she is eligible for release on parole after serving the  
32 minimum time prescribed, with credit for good-time allowances, and for  
33 commutation by the exercise of executive clemency.

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

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

4  
5       SECTION 91. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
6 amended to add a new section to read as follows:

7       16-93-614. Parole eligibility – Class Y, Class A, or Class B felonies  
8 – Second offender.

9       An inmate classified as a second offender under § 16-93-606 and one who  
10 pleads guilty to or is convicted of a Class Y felony, upon entering a  
11 correctional institution in this state under sentence from a circuit court,  
12 is not eligible for release on parole until a minimum of one-half ( $\frac{1}{2}$ ) of his  
13 or her sentence is served, with credit for good-time allowances, or one-half  
14 ( $\frac{1}{2}$ ) of the time to which the sentence is commuted by executive clemency is  
15 served, with credit for good-time allowances.

16  
17       SECTION 92. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
18 amended to add a new section to read as follows:

19       16-93-615. Parole eligibility – Class Y, Class A, or Class B felonies  
20 – Third offender.

21       An inmate classified as a third offender under § 16-93-606, upon  
22 entering a correctional institution in this state under sentence from a  
23 circuit court, is not eligible for release on parole until a minimum of  
24 three-fourths ( $\frac{3}{4}$ ) of his or her sentence is served, with credit for good-time  
25 allowances, or three-fourths ( $\frac{3}{4}$ ) of the time to which the sentence is  
26 commuted by executive clemency is served, with credit for good-time  
27 allowances.

28  
29       SECTION 93. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
30 amended to add a new section to read as follows:

31       16-93-616. Parole eligibility – Class Y, Class A, or Class B felonies  
32 – Fourth or subsequent offender.

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

1  
2 SECTION 94. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
3 amended to add a new section to read as follows:

4 16-93-617. Parolee convicted of another crime while on parole – Class  
5 Y, Class A, or Class B felonies.

6 (a)(1) When a person is convicted of a Class Y, Class A, or Class B  
7 felony committed while he or she was on parole, the felon is to be committed  
8 to the Department of Correction to serve the remainder of his or her original  
9 sentence, including any portion suspended, with credit for good-time  
10 allowances.

11 (2) Upon conviction for the subsequent felony, the court shall  
12 require the sentence for the subsequent felony to be served consecutively  
13 with the sentence for the previous felony.

14 (b)(1) A person who is found guilty of a Class Y, Class A, or Class B  
15 felony and placed on probation or suspended sentence who then is subsequently  
16 found guilty of another Class Y, Class A, or Class B felony committed while  
17 on probation or suspended sentence is to be committed to the Department of  
18 Correction to serve the remainder of his or her suspended sentence plus the  
19 sentence imposed for the subsequent felony.

20 (2) The sentence imposed for the subsequent felony is to be  
21 served consecutively with the remainder of the suspended sentence.

22  
23 SECTION 95. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
24 amended to add a new section to read as follows:

25 16-93-618. Parole eligibility – Class C felonies, Class D felonies,  
26 and other drug possession felonies.

27 A person who commits a Class C felony, Class D felony, or who otherwise  
28 violates § 5-64-419 and who is incarcerated for that conviction is eligible  
29 for release on parole after having served one-sixth (1/6) of his or her  
30 sentence, with credit for good-time allowances, or one-third (1/3) of the  
31 time to which his or her sentence is commuted by executive clemency, with  
32 credit for good-time allowances.

33  
34 SECTION 96. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
35 amended to add a new section to read as follows:

36 16-93-619. Parole eligibility – Certain Class Y, Class A, or Class B

1 felony drug offenses.

2 (a) A person who is convicted of §§ 5-64-420 – 5-64-429 with the  
 3 conviction being a Class Y, Class A, or Class B felony and who is  
 4 incarcerated for that conviction is eligible for release on parole after  
 5 having served one-fourth (1/4) of his or her sentence, with credit for good-  
 6 time allowances, or one-fourth (1/4) of the time to which his or her sentence  
 7 is commuted by executive clemency, with credit for good-time allowances.

8 (b) For parole eligibility purposes under this section, consecutive  
 9 sentences by one (1) or more courts or for one (1) or more counts are to be  
 10 considered as a single commitment reflecting the cumulative sentence to be  
 11 served.

12  
 13 SECTION 97. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
 14 amended to add a new section to read as follows:

15 16-93-620. Parole eligibility – Certain Class Y felony offenses and  
 16 certain methamphetamine offenses – Seventy percent crimes.

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

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

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

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

28 (D) Rape, § 5-14-103;

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

30 (F) Possession of methamphetamine, § 5-64-419(b)(1)(C), if  
 31 a Class B felony;

32 (G) Delivery of methamphetamine, 5-64-420;

33 (H) Manufacturing methamphetamine, § 5-64-421;

34 (I) Trafficking methamphetamine, § 5-64-430(b)(1); or

35 (J) Possession of drug paraphernalia with the purpose to  
 36 manufacture methamphetamine, § 5-64-433(a)(2)(B).

1           (2)(A) The seventy percent (70%) provision of subdivision (a)(1)  
2 of this section has no application to any person who is found guilty of or  
3 pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102,  
4 regardless of the date of the offense.

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

8           (3)(A)(i) Regardless of the date of the offense, the seventy-  
9 percent provision under subdivision (a)(1) of this section shall include  
10 credit for the award of meritorious good time under § 12-29-201 to any person  
11 who is found guilty of or pleads guilty or nolo contendere to:

12                           (a) Possession of methamphetamine, § 5-64-  
13 419(b)(1)(C), if a Class B felony;

14                           (b) Delivery of methamphetamine, 5-64-420;

15                           (c) Manufacturing methamphetamine, § 5-64-421;

16                           (d) Trafficking methamphetamine, § 5-64-  
17 430(b)(1); or

18                           (e) Possession of drug paraphernalia with the  
19 purpose to manufacture methamphetamine, § 5-64-433(a)(2)(B).

20           (ii) Regardless of the date of the offense and  
21 unless the person is sentenced to a term of life imprisonment, the seventy-  
22 percent provision under subdivision (a)(1) of this section may include credit  
23 for the award of meritorious good time under § 12-29-202 to any person who is  
24 found guilty of or pleads guilty or nolo contendere to:

25                           (a) Possession of methamphetamine, § 5-64-  
26 419(b)(1)(C), if a Class B felony;

27                           (b) Delivery of methamphetamine, 5-64-420;

28                           (c) Manufacturing methamphetamine, § 5-64-421;

29                           (d) Trafficking methamphetamine, § 5-64-  
30 430(b)(1); or

31                           (e) Possession of drug paraphernalia with the  
32 purpose to manufacture methamphetamine, § 5-64-433(a)(2)(B).

33           (B) In no event shall the time served by any person who is  
34 found guilty of or pleads guilty or nolo contendere to possession of  
35 methamphetamine, § 5-64-419(b)(1)(C), if a Class B felony, delivery of  
36 methamphetamine, 5-64-420, manufacturing methamphetamine, § 5-64-421,

1 trafficking methamphetamine, § 5-64-430(b)(1), or possession of drug  
2 paraphernalia with the purpose to manufacture methamphetamine, § 5-64-  
3 433(a)(2)(B), be reduced to less than fifty percent (50%) of the person's  
4 original sentence.

5 (4)(A) When any person sentenced under subdivision (a)(3) of  
6 this section becomes eligible for parole, the Department of Community  
7 Correction shall send a notice of the parole hearing to the prosecuting  
8 attorney of the judicial district or districts in which the person was found  
9 guilty or pleaded guilty or nolo contendere to an offense listed in  
10 subdivision (a)(1) of this section.

11 (B) The notice shall contain the following language in 12-  
12 point capital letters bold type: INMATE SENTENCED UNDER ARKANSAS CODE § 16-  
13 93-620.

14 (b) A jury may be instructed under § 16-97-103 regarding the awarding  
15 of meritorious good time under subdivision (a)(3) of this section.

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

18 (1) The defendant was a juvenile at the time of the offense;

19 (2) The juvenile was merely an accomplice to the offense; and

20 (3) The offense occurred on or after July 28, 1995.

21 (d) The awarding of meritorious good time under § 12-29-201 or § 12-  
22 29-202 shall not be applicable to persons sentenced under subdivisions  
23 (a)(1)(A)-(J) of this section.

24  
25 SECTION 98. Arkansas Code Title 16, Chapter 93, Subchapter 6 is  
26 amended to add a new section to read as follows:

27 16-93-621. Parole eligibility – Certain Class Y felony offenses –  
28 Fifty percent crimes.

29 (a)(1) Notwithstanding any law allowing the award of meritorious good  
30 time or any other law to the contrary, any person who is found guilty of or  
31 pleads guilty or nolo contendere to trafficking a controlled substance, § 5-  
32 64-430, except for trafficking methamphetamine, § 5-64-430(b)(1), shall not  
33 be eligible for parole or community punishment transfer, except as provided  
34 under subsection (b) of this section, until the person serves fifty percent  
35 (50%) of the term of imprisonment to which the person is sentenced, including  
36 a sentence prescribed under § 5-4-501.



1           (2)(A) The fifty-percent provision under subdivision (a)(1) of  
 2 this section shall include credit for the award of meritorious good time  
 3 under § 12-29-201.

4           (B) The fifty-percent provision under subdivision (a)(1)  
 5 of this section may include credit for the award of meritorious good time  
 6 under § 12-29-202 unless the person is sentenced to a term of life  
 7 imprisonment.

8           (3) In no event shall the time served by any person who is found  
 9 guilty of or pleads guilty or nolo contendere to a crime listed in  
 10 subdivision (a)(1) of this section be reduced to less than fifty percent  
 11 (50%) of the person's original sentence.

12           (b) The sentencing judge, in his or her discretion, may waive  
 13 subsection (a) of this section under the following circumstances:

14           (1) The defendant was a juvenile at the time of the offense; and

15           (2) The juvenile was merely an accomplice to the offense.

16  
 17           SECTION 99. Arkansas Code Title 16, Chapter 93, Subchapter 7 is  
 18 amended to read as follows:

19           Subchapter 7

20           – Parole — ~~Grant or Revocation Generally~~

21           16-93-701. ~~Grant~~ — Authority to grant and ~~procedures generally~~  
 22 parameters.

23           (a)(1) The Parole Board may release on parole any individual eligible  
 24 under the provisions of § 16-93-601 who is confined in any correctional  
 25 institution administered by the Department of Correction, when in its opinion  
 26 there is a reasonable probability that the prisoner can be released without  
 27 detriment to the community or himself or herself.

28           (2) All paroles shall issue upon order, duly adopted, of the  
 29 board.

30           (b)(1) Before ordering the release of any prisoner, the prisoner shall  
 31 be interviewed by the board or a panel designated by the board and, for all  
 32 parole decisions after January 1, 2012, the board shall conduct a risk-needs  
 33 assessment review of all parole applicants.

34           (2)(A) The parole shall be ordered only for the best interest of  
 35 society and not as an award for clemency.

36           (B) The parole shall not be considered as a reduction of

1 sentence or a pardon.

2 (3) A prisoner shall be placed on parole only when the board  
3 believes that he or she is able and willing to fulfill the obligations of a  
4 law-abiding citizen.

5 (4) Every prisoner, while on parole, shall remain in the legal  
6 custody of the institution from which he or she was released, but shall be  
7 subject to the orders of the board.

8  
9 16-93-702. ~~Grant~~ Eligibility – Required recommendations.

10 (a) Before the Parole Board shall grant any parole, the board shall  
11 solicit the written or oral recommendations of the committing court, the  
12 prosecuting attorney, and the sheriff of the county from which the inmate was  
13 committed.

14 (b) If the person whose parole is being considered by the board was  
15 convicted of capital murder, § 5-10-101, or of a Class Y, Class A, or Class B  
16 felony, or any violent or sexual offense, the board shall also notify the  
17 victim of the crime, or the victim's next of kin, of the parole hearing and  
18 shall solicit written or oral recommendations of the victim or the victim's  
19 next of kin regarding the granting of the parole, unless the prosecuting  
20 attorney has notified the board at the time of commitment of the prisoner  
21 that the victim or the victim's next of kin does not want to be notified of  
22 future parole hearings.

23 (c) The board shall retain a copy of the recommendations in the  
24 board's file.

25 (d) The recommendations shall not be binding upon the board in the  
26 granting of any parole, but shall be maintained in a file ~~which~~ that shall be  
27 open to the public during reasonable business hours.

28 (e) When soliciting recommendations from a victim of a crime, the  
29 board shall notify the victim or the victim's next of kin of the date, time,  
30 and place of the parole hearing.

31  
32 16-93-703. ~~Grant~~ Eligibility – Place of hearings.

33 (a) The Parole Board shall not schedule parole hearings at which  
34 victims or relatives of victims of crime are invited to appear at a facility  
35 wherein inmates are housed other than the Central Administration Building of  
36 the Department of Correction at Pine Bluff.

1 (b) Nothing in this section shall be construed as prohibiting the  
2 board from conducting parole hearings in two (2) sessions, one (1) at the  
3 place of the inmate's incarceration for interviews with the inmate, the  
4 inmate's witnesses, and correctional personnel, and the second session for  
5 victims and relatives of victims as set out in subsection (a) of this  
6 section.

7  
8 16-93-704. ~~Grant~~ Eligibility – Notice to law enforcement personnel and  
9 committing court.

10 (a) At the time that any person is paroled by the Parole Board, the  
11 board shall give written notice of the granting of the parole to the sheriff,  
12 the committing court, and the chief of police of all cities of the first  
13 class of the county from which the person was sentenced.

14 (b) If the person is paroled to a county other than that from which he  
15 or she was committed, the board shall give notice to the chief of police or  
16 marshal of the city to which he or she is paroled, to the chief of police of  
17 all cities of the first class, ~~and to~~ to the sheriff of the county to which he  
18 or she is paroled, and to the sheriff of the county from which the person was  
19 committed.

20  
21 16-93-705. Revocation – ~~Return of parole violator~~ – Hearings Procedures  
22 and hearings generally.

23 (a)(1) At any time during a parolee's release on parole, the Parole  
24 Board may issue a warrant for the arrest of the parolee for violation of any  
25 conditions of parole or may issue a notice to appear to answer a charge of a  
26 violation.

27 (2) The warrant or notice shall be served personally upon the  
28 individual.

29 (3) The warrant shall authorize all officers named in the  
30 warrant to place the parolee in custody at any suitable detention facility  
31 pending a hearing.

32 (4) Any parole officer may arrest a parolee without a warrant or  
33 may deputize any officer with power of arrest to do so by giving him or her a  
34 written statement setting forth that the parolee, in the judgment of the  
35 parole officer, violated conditions of his or her parole.

36 (5) The written statement delivered with the parolee by the

1 arresting officer to the official in charge of the detention facility to  
2 which the parolee is brought shall be sufficient warrant for detaining him or  
3 her pending disposition.

4 (6) If the board or its designee finds, by a preponderance of  
5 the evidence, that the parolee has inexcusably failed to comply with a  
6 condition of his or her parole, the parole may be revoked at any time prior  
7 to the expiration of the period of parole.

8 (7) A parolee for whose return a warrant has been issued by the  
9 board shall be deemed a fugitive from justice if it is found that the warrant  
10 cannot be served.

11 (8) The board shall determine whether the time from the issuance  
12 of the warrant to the date of arrest, or any part of it, shall be counted as  
13 time served under the sentence.

14 (b)(1) A parolee arrested for violation of parole shall be entitled to  
15 a preliminary hearing to determine whether there is reasonable cause to  
16 believe that he or she has violated a condition of parole.

17 (2) The hearing shall be conducted by the parole hearing  
18 examiner for the board as soon as practical after arrest and reasonably near  
19 the place of the alleged violation or arrest.

20 (3) The parolee shall be given prior notice of the date, time,  
21 and location of the hearing, the purpose of the hearing, and the conditions  
22 of parole he or she is alleged to have violated.

23 (4) Except as provided in subsection (d) of this section, the  
24 parolee shall have the right to hear and controvert evidence against him or  
25 her, to offer evidence in his or her own behalf, and to be represented by  
26 counsel.

27 (5) If the hearing examiner finds that there is reasonable cause  
28 to believe that the parolee has violated a condition of parole, the hearing  
29 examiner may order the parolee returned to the custody of the Department of  
30 Correction for a revocation hearing before the board.

31 (6) If the hearing examiner finds that there is reasonable cause  
32 to believe that the parolee has violated a condition of parole, the hearing  
33 examiner may return the offender to parole supervision rather than to the  
34 custody of the Department of Correction and may impose additional supervision  
35 conditions in response to the violating conduct.

36 ~~(6)(7)~~ If the hearing examiner does not find reasonable cause, he

1 or she shall order the parolee released from custody, but that action shall  
2 not bar the board from holding a hearing on the alleged violation of parole  
3 or from ordering the parolee to appear before it.

4 ~~(7)~~(8) The hearing examiner shall prepare and furnish to the  
5 board and the parolee a summary of the hearing, including the substance of  
6 the evidence and testimony considered.

7 (c)(1) A parole shall not be revoked except after a revocation  
8 hearing, which shall be conducted by the board or its designee within a  
9 reasonable period of time after the parolee's arrest.

10 (2) The parolee shall be given prior notice of the date, time,  
11 and location of the hearing, the purpose of the hearing, and the conditions  
12 of parole he or she is alleged to have violated.

13 (3) Except as provided in subsection (d) of this section, the  
14 parolee shall have the right to hear and controvert evidence against him or  
15 her, to offer evidence in his or her own defense, and to be represented by  
16 counsel.

17 (4) If parole is revoked, the board or its designee shall  
18 prepare and furnish to the parolee a written statement of evidence relied on  
19 and the reasons for revoking parole.

20 (d) At a preliminary hearing ~~pursuant to~~ under subsection (b) of this  
21 section or a revocation hearing ~~pursuant to~~ under subsection (c) of this  
22 section:

23 (1) The parolee shall have the right to confront and cross-  
24 examine adverse witnesses unless the hearing examiner or the board or its  
25 designee specifically finds good cause for not allowing confrontation; and

26 (2) The parolee may introduce any relevant evidence of the  
27 alleged violation, including letters, affidavits, and other documentary  
28 evidence, regardless of its admissibility under the rules governing the  
29 admission of evidence.

30 (e) A preliminary hearing ~~pursuant to~~ under subsection (b) of this  
31 section shall not be required if:

32 (1) The parolee waives a preliminary hearing; or

33 (2) The revocation hearing ~~pursuant to~~ under subsection (c) of  
34 this section is held promptly after the arrest and reasonably near the place  
35 where the alleged violation occurred or where the parolee was arrested.

36 (f) A preliminary hearing ~~pursuant to~~ under subsection (b) of this

1 section and a revocation hearing ~~pursuant to~~ under subsection (c) of this  
2 section shall not be necessary if the revocation is based on the parolee's  
3 conviction, guilty plea, or plea of nolo contendere to a felony offense for  
4 which he or she is sentenced to the Department of Correction or to any other  
5 state or federal penal institution.

6  
7 16-93-706. Revocation - ~~Powers of officials and circuit courts~~ Subpoena  
8 of witnesses and documents - ~~Penalties~~.

9 (a)(1) The Chair of the Parole Board or his or her designee, the  
10 hearing officer presiding over any preliminary hearing with respect to an  
11 alleged parole violation, the administrator of the board, or any member of  
12 the board pursuant to the authority of the board to meet and determine  
13 whether to revoke parole shall have the power to issue oaths and to subpoena  
14 witnesses to appear and testify and bring before the hearing officer or the  
15 board any relevant books, papers, records, or documents.

16 (2) The subpoena shall be directed to any sheriff, coroner, or  
17 constable of any county where the designated witness resides or is found.  
18 The endorsed affidavit on the subpoena of any person of full age shall be  
19 proof of the service, which shall be served and returned in the same manner  
20 as subpoenas in civil actions in the circuit courts are served and returned.

21 (b) The fees and mileage expenses as prescribed by law for witnesses  
22 in civil cases shall be paid by the Department of Correction.

23 (c)(1) In case of failure or refusal by any person to comply with a  
24 subpoena issued under this section to testify or answer to any matter  
25 regarding which the person may be lawfully interrogated, any circuit court in  
26 this state, on application of the hearing officer or the chair, shall, in  
27 term or vacation, issue an attachment for the person and compel him or her to  
28 comply with the subpoena and appear before the hearing officer or the board  
29 and to produce any testimony and documents as may be required.

30 (2) The circuit court shall have the power to punish any  
31 contempt, in case of disobedience, as in civil cases, or it shall be a  
32 misdemeanor for a witness to refuse or neglect to appear and testify,  
33 punishable upon conviction by a fine of not less than fifty dollars (\$50.00)  
34 nor more than five hundred dollars (\$500).

35 (d) Any person willfully testifying falsely under oath before the  
36 board or at a preliminary hearing in which probable cause for parole

1 revocation is to be considered as to any matter material to a lawful inquiry  
 2 by the board or hearing officer may be charged with perjury and upon  
 3 conviction punished accordingly.

4  
 5 16-93-708. Parole alternative – Home detention.

6 (a) As used in this section:

7 (1) "Approved electronic monitoring or supervising device" means  
 8 any electronic device approved by the Board of Corrections which that meets  
 9 the minimum Federal Communications Commission regulations and requirements,  
 10 and which that is limited in capability to recording or transmitting  
 11 information as to the criminal defendant's presence in the home;

12 (2) "Permanently incapacitated" means an inmate who, as  
 13 determined by a licensed physician:

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

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

17 (C) No longer poses a threat to public safety because of  
 18 the medical condition; and

19 (3) "Terminally ill" means an inmate who, as determined by a  
 20 licensed physician:

21 (A) Has an incurable condition caused by illness or  
 22 disease;

23 (B) Will likely die within two (2) years due to the  
 24 illness or disease; and

25 (C) Is so debilitated by the illness or disease that the  
 26 inmate does not pose a public safety risk.

27 (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this  
 28 section, a defendant convicted of a felony or misdemeanor and sentenced to  
 29 imprisonment may be incarcerated in a home detention program when+ the  
 30 Director of the Department of Correction or the Director of the Department of  
 31 Community Correction shall communicate to the Parole Board when, in the  
 32 independent opinions of either a Department of Correction physician or  
 33 Department of Community Correction physician and a consultant physician in  
 34 Arkansas, an inmate is either terminally ill or permanently incapacitated and  
 35 should be considered for transfer to parole supervision.

36 ~~(i) In the independent opinions of a prison~~

1 ~~physician and a consultant physician from the community, a person who is~~  
2 ~~incarcerated in the Department of Correction or Department of Community~~  
3 ~~Correction has an incurable illness which on the average will result in death~~  
4 ~~within twelve (12) months; or~~

5 ~~(ii) A person who is incarcerated in the Department~~  
6 ~~of Correction or Department of Community Correction is permanently physically~~  
7 ~~or mentally incapacitated to the degree that the community criteria are met~~  
8 ~~for placement in a nursing home, rehabilitation facility, or setting~~  
9 ~~providing a similar level of care.~~

10 (B) The Director of the Department of Correction or the  
11 Director of the Department of Community Correction shall make the facts  
12 described in subdivision (b)(1)(A) of this section known to the Parole Board  
13 for consideration of early release to home detention.

14 (2) The Board of Corrections shall promulgate rules that will  
15 establish policy and procedures for incarceration in a home detention  
16 program.

17 (c)(1) In all instances where the ~~department~~ Department of Correction  
18 may release any inmate to community supervision, in addition to all other  
19 conditions ~~which~~ that may be imposed by the ~~department~~ Department of  
20 Correction, the ~~department~~ Department of Correction may require the criminal  
21 defendant to participate in a home detention program.

22 (2)(A) The term of the home detention shall not exceed the  
23 maximum number of years of imprisonment or supervision to which the inmate  
24 could be sentenced.

25 (B) The length of time the defendant participates in a  
26 home detention program and any good-time credit awarded shall be credited  
27 against the defendant's sentence.

28 (d) The Board of Corrections shall establish policy and procedures for  
29 participation in a home detention program, including, but not limited to,  
30 program criteria, terms, and conditions of release.

31  
32 16-93-709. Sex offender may not reside with minors.

33 (a) Whenever an inmate in a facility of the Department of Correction  
34 who has been found guilty of or has pleaded guilty or nolo contendere to any  
35 sexual offense defined in § 5-14-101 et seq., or incest as defined by § 5-26-  
36 202, and the sexual offense or incest was perpetrated against a minor,



1 becomes eligible for parole and makes application for release on parole, the  
2 Parole Board shall prohibit, as a condition of granting the parole, the  
3 parolee from residing upon parole in a residence with any minor, unless the  
4 board makes a specific finding that the inmate poses no danger to the minors  
5 residing in the residence.

6 (b) If the board, upon a hearing ~~pursuant to~~ under § 16-93-705, finds,  
7 by a preponderance of the evidence, that the parolee has failed to comply  
8 with this condition of parole, the parole may be revoked and the parolee  
9 returned to the custody of the department.

10  
11 16-93-710. Parole alternative – Transfer to community punishment  
12 program – Eligibility.

13 (a) As used in this section and §§ 16-93-711 – 16-93-713, “felonies”  
14 means those crimes classified as Class Y, Class A, Class B, Class C, Class D,  
15 or unclassified felonies by the laws of this state.

16 (b)(1) A person who committed a felony before January 1, 1994, and who  
17 was convicted and incarcerated for that felony shall be eligible for release  
18 on parole under this section and §§ 16-93-711 – 16-93-713 in accordance with  
19 the parole eligibility law in effect at the time the crime was committed.

20 (2) A person who committed a target offense under the Community  
21 Punishment Act, § 16-93-1201 et seq., before January 1, 1994, and who has not  
22 been sentenced to a term of incarceration may waive the right to be released  
23 under the parole eligibility law in effect at the time the crime was  
24 committed and shall become eligible for judicial transfer pursuant to the  
25 transfer provisions provided in subdivision (c)(2) of this section.

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

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

35 (1)(A) A inmate under sentence of death or life imprisonment  
36 without parole shall not be eligible for transfer, but may be pardoned or

1 have his or her sentence commuted by the Governor as provided by law.

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

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

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

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

14 (ii) A copy of the commitment shall be forwarded  
15 immediately to the Department of Correction and to the Department of  
16 Community Correction.

17 (iii) In the event that an offender is sentenced to  
18 the Department of Correction without judicial transfer on one (1) sentence  
19 and concurrently sentenced to the Department of Correction with judicial  
20 transfer on another sentence, the offender shall remain in the Department of  
21 Correction, and the sentence with judicial transfer may be discharged in the  
22 same manner as that of an offender transferred back to the Department of  
23 Correction.

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

26 (C) The Department of Community Correction shall provide  
27 for the appropriate disposition of the offender as expeditiously as  
28 practicable under rules and regulations developed by the Board of  
29 Corrections.

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

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

1                   (F) An offender who is sentenced after July 31, 2007, and  
2 who is transferred back to the Department of Correction for administrative  
3 reasons is eligible for transfer to Department of Community Correction  
4 supervision in the same manner as an offender who is sentenced to the  
5 Department of Correction without a judicial transfer to the Department of  
6 Community Correction; and

7                   (3)(A) Every other classified or unclassified felon who is  
8 incarcerated therefor shall be eligible for transfer to community punishment  
9 after having served one-third (1/3) or one-half (½), with credit for  
10 meritorious good time, of his or her sentence depending on the seriousness  
11 determination made by the Arkansas Sentencing Commission, or one-half (½),  
12 with credit for meritorious good time, of the time to which his or her  
13 sentence is commuted by executive clemency.

14                   (B) For example, a six-year sentence with optimal  
15 meritorious good-time credits will make the offender eligible for transfer in  
16 one (1) year if he or she is required to serve one-third (1/3) of his or her  
17 sentence, or one and one-half (1½) years if he or she is required to serve  
18 one-half (½) of his or her sentence.

19  
20                   16-93-711. Parole alternative – Transfer to community punishment  
21 program – Procedures.

22                   (a)(1)(A) An inmate under sentence for any felony, except those listed  
23 in subsection (b) of this section, shall be transferred from the Department  
24 of Correction to the Department of Community Correction under this section, §  
25 16-93-710, § 16-93-712, and § 16-93-713, subject to rules promulgated by the  
26 Board of Corrections and conditions set by the Parole Board.

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

32                   (C) The Parole Board shall begin transfer release  
33 proceedings or a preliminary review under this subchapter no later than six  
34 (6) months before a person's transfer eligibility date, and the Parole Board  
35 shall authorize jacket review procedures no later than six (6) months before  
36 a person's transfer eligibility at all institutions holding parole-eligible

1 inmates to prepare parole applications.

2 (D) This review may be conducted without a hearing when  
3 the inmate has not received a major disciplinary report against him or her  
4 that 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 notice of conditions of the transfer  
14 including without limitation:

15 (a) Supervision levels;

16 (b) Economic fee sanction;

17 (c) Treatment program;

18 (d) Programming requirements; and

19 (e) Facility placement when appropriate; or

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

23 (C) Upon completion of the course of action determined by  
24 the Parole Board and after final review of the inmate's file to ensure  
25 successful completion, the Parole Board shall authorize the inmate's transfer  
26 to the Department of Community Correction under this section, § 16-93-710, §  
27 16-93-712, and § 16-93-713, in accordance with administrative policies and  
28 procedures governing the transfer and subject to conditions attached to the  
29 transfer.

30 (3) Should an inmate fail to fulfill the course of action  
31 outlined by the Parole Board to facilitate transfer to community correction,  
32 it shall be the responsibility of the inmate to petition the Parole Board for  
33 rehearing.

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

36 (B)(i) Open meetings held under subsection (a)(2)(A) of

1 this section may be conducted through video-conference technology if the  
2 person is housed at that time in a county jail and if the technology is  
3 available.

4 (ii) Open meetings utilizing video conference  
5 technology shall be conducted in public.

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

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

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

15 (B) Kidnapping, § 5-11-102;

16 (C) Rape, § 5-14-103;

17 (D) Sexual assault in the first degree, § 5-14-124;

18 (E) Sexual assault in the second degree, § 5-14-125;

19 (F) Battery in the first degree, § 5-13-201;

20 (G) Domestic battering in the first degree, § 5-26-303;

21 (H) Aggravated robbery, § 5-12-103;

22 (I) Causing a catastrophe, § 5-38-202(a);

23 (J) Engaging in a continuing criminal enterprise, § 5-64-  
24 405;

25 (K) Manufacturing or delivery of methamphetamine, § 5-64-  
26 420 and § 5-64-421;

27 (L) Trafficking a controlled substance, § 5-64-430; or

28 (M) Simultaneous possession of drugs and firearms, § 5-74-  
29 106.

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

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

36 (B) The policies and procedures shall include a provision

1 for notification of the victim or victims that a hearing shall be held and  
2 records kept of the proceedings and that there be a listing of the criteria  
3 upon which a denial may be based.

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

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

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

15 (A)(i) Before the Parole Board shall grant any transfer,  
16 the Parole Board shall solicit the written or oral recommendations of the  
17 committing court, the prosecuting attorney, and the sheriff of the county  
18 from which the inmate was committed.

19 (ii) If the person whose transfer is being  
20 considered by the Parole Board was convicted of one (1) of the offenses  
21 enumerated in subdivision (b)(1) of this section, the Parole Board shall also  
22 notify the victim of the crime or the victim's next of kin of the transfer  
23 hearing and shall solicit written or oral recommendations of the victim or  
24 his or her next of kin regarding the granting of the transfer unless the  
25 prosecuting attorney has notified the Parole Board at the time of commitment  
26 of the prisoner that the victim or his or her next of kin does not want to be  
27 notified of future transfer hearings.

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

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

34 (B)(i) The Parole Board shall not schedule transfer  
35 hearings at which victims or relatives of victims of crimes are invited to  
36 appear at a facility wherein inmates are housed other than the central

1 administration building of the Department of Correction at Pine Bluff.

2 (ii) Nothing herein shall be construed as  
3 prohibiting the Parole Board from conducting transfer hearings in two (2)  
4 sessions, one (1) at the place of the inmate's incarceration for interviews  
5 with the inmate, the inmate's witnesses, and correctional personnel, and the  
6 second session for victims and relatives of victims as set out in subdivision  
7 (b)(6)(B)(i) of this section;

8 (C)(i) At the time that any person eligible under  
9 subdivision (c)(1) of this section is transferred by the Parole Board, the  
10 Department of Community Correction shall give written notice of the granting  
11 of the transfer to the sheriff, the committing court, and the chief of police  
12 of each city of the first class of the county from which the person was  
13 sentenced.

14 (ii) If the person is transferred to a county other  
15 than that from which he or she was committed, the Parole Board shall give  
16 notice to the chief of police or marshal of the city to which he or she is  
17 transferred, to the chief of police of each city of the first class and the  
18 sheriff of the county to which he or she is transferred, and to the sheriff  
19 of the county from which the person was committed; and

20 (D)(i) It shall be the responsibility of the prosecuting  
21 attorney of the county from which the inmate was committed to notify the  
22 Parole Board at the time of commitment of the desire of the victim or his or  
23 her next of kin to be notified of any future transfer hearings and to forward  
24 to the Parole Board the last known address and telephone number of the victim  
25 or his or her next of kin.

26 (ii) It shall be the responsibility of the victim or  
27 his or her next of kin to notify the Parole Board of any change in address or  
28 telephone number.

29 (iii) It shall be the responsibility of the victim  
30 or his or her next of kin to notify the Parole Board after the date of  
31 commitment of any change in regard to the desire to be notified of any future  
32 transfer hearings.

33 (c)(1) In all other felonies, before the Parole Board sets conditions  
34 for transfer of an inmate to community punishment, a victim or his or her  
35 next of kin in cases in which the victim is unable to express his or her  
36 wishes, who has expressed the wish to be consulted by the Parole Board shall

1 be notified of the date, time, and place of the transfer hearing.

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

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

7 (3)(A) Victim input to the Parole Board shall be limited to oral  
8 or written recommendations on conditions relevant to the offender under  
9 review for transfer.

10 (B) The recommendations shall not be binding on the Parole  
11 Board, but shall be given due consideration within the resources available  
12 for transfer.

13 (d)(1) The Parole Board shall approve a set of conditions that shall  
14 be applicable to all inmates transferred from the Department of Correction to  
15 the Department of Community Correction.

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

18 (e)(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 Department of Correction and Department of  
23 Community Correction shall strive to accommodate the actions required by the  
24 Board of Corrections to the best of their ability.

25 (f) Transfer is not an award of clemency, and it shall not be  
26 considered as a reduction of sentence or a pardon.

27 (g) Every inmate while on transfer status shall remain in the legal  
28 custody of the Department of Correction under the supervision of the  
29 Department of Community Correction and subject to the orders of the Parole  
30 Board.

31 (h) An inmate who is sentenced under the provisions of § 5-4-501(c) or  
32 § 5-4-501(d) for a serious violent felony or a felony involving violence may  
33 be considered eligible for parole or for community correction transfer upon  
34 reaching regular parole or transfer eligibility, but only after reaching a  
35 minimum age of fifty-five (55) years.

36 (i) Decisions on parole release, courses of action applicable prior to



1 transfer, and transfer conditions to be set by the Parole Board shall be  
2 based on a reasoned and rational plan developed in conjunction with an  
3 accepted risk needs assessment tool such that each decision is defensible  
4 based on preestablished criteria.

5  
6 16-93-712. Parole alternative – Transfer to community punishment  
7 program – Computation of sentence.

8 (a)(1) Time served for a sentence shall be deemed to begin on the day  
9 sentence is imposed, not on the day a prisoner is received by the Department  
10 of Correction.

11 (2) Time served shall continue only during the time in which an  
12 individual is actually confined in a county jail or other local place of  
13 lawful confinement or while under the custody and supervision of the  
14 Department of Correction.

15 (3) Once sentenced to the Department of Correction, the  
16 department shall retain legal custody of the inmate for the duration of the  
17 original sentence.

18 (b) The sentencing judge shall direct, when he or she imposes  
19 sentence, that time already served by the defendant in jail or other place of  
20 detention shall be credited against the sentence.

21  
22 16-93-713. Parole alternative – Transfer to community punishment  
23 program – Revocation of transfer.

24 (a) In the event an offender transferred under this section and §§ 16-  
25 93-710 – 16-93-712 violates the terms or conditions of his or her transfer, a  
26 hearing shall follow all applicable legal requirements and shall be subject  
27 to any additional policies, rules, and regulations set by the Parole Board.

28 (b)(1) In the event an offender transferred under this section and §§  
29 16-93-710 – 16-93-712 is found to be or becomes ineligible for transfer into  
30 a Department of Community Correction facility, he or she shall be transported  
31 to the Department of Correction to serve the remainder of his sentence.

32 (2) Notice of the ineligibility and the reasons therefor shall  
33 be provided to the offender, and a hearing may be requested before the board  
34 if the offender contests the factual basis of the ineligibility. Otherwise,  
35 the board may administratively approve the transfer to the Department of  
36 Correction.

1       (c) An offender who is judicially transferred to a Department of  
2 Community Correction facility and subsequently transferred back to the  
3 Department of Correction by the board for disciplinary or administrative  
4 reasons may not become eligible for any further transfer under § 16-93-  
5 710(c)(2)(E) and (F).

6  
7       16-93-714. Parole for inmates who have served their term of  
8 imprisonment in a county jail prior to being processed into the Department of  
9 Correction.

10       (a)(1) Subject to conditions set by the Parole Board, an offender  
11 convicted of a felony and sentenced to a term of imprisonment of two (2)  
12 years or less in the Department of Correction, and who has served his or her  
13 term of imprisonment in a county jail prior to being processed into the  
14 Department of Correction, may be paroled from the Department of Correction  
15 county jail backup facility directly to the Department of Community  
16 Correction under parole supervision, and upon eligibility determination,  
17 processed for release by the board.

18       (2) Transfer release proceedings or a preliminary review under  
19 this subchapter shall begin no later than six (6) months prior to a person's  
20 transfer eligibility date, and the Parole Board shall authorize jacket review  
21 procedures at all institutions holding parole-eligible inmates to prepare  
22 parole applications to comply with this time frame.

23       (3) The jacket review will be conducted by staff either from the  
24 Department of Community Correction or by Department of Correction.

25       (b) An offender who has been found guilty of or pleaded guilty or nolo  
26 contendere to a violent offense as defined by § 5-4-501(c)(2) or a Class Y  
27 felony offense shall be ineligible under this section.

28       (c) As determined by the county sheriff, an offender who has committed  
29 violent or sexual acts while incarcerated in a county jail facility shall be  
30 ineligible to participate in the program established by this section.

31  
32       16-93-715. Parole alternatives - Electronic monitoring of parolees.

33       (a) "Approved electronic monitoring or supervising device" means a  
34 device described in § 16-93-708(a).

35       (b)(1)(A) Subject to the provisions of subdivision (b)(2) of this  
36 section, an inmate serving a sentence in the Department of Correction may be

1 released from incarceration:

2 (i) After serving one hundred twenty (120) days of  
3 his or her sentence;

4 (ii) If the inmate has an approved parole plan; and

5 (iii) If the inmate was sentenced from a cell in the  
6 sentencing guidelines that does not include incarceration in the presumptive  
7 range.

8 (B) The Director of the Department of Correction or the  
9 Director of the Department of Community Correction shall make the facts  
10 described in subdivision (b)(1)(A) of this section known to the Parole Board  
11 for consideration of electronic monitoring.

12 (2) The Board of Corrections shall promulgate rules that will  
13 establish policy and procedures for an electronic monitoring program.

14 (c)(1) An inmate released from incarceration on parole under this  
15 section shall be supervised by the Department of Community Correction using  
16 electronic monitoring until the inmate's transfer eligibility date or for at  
17 least ninety (90) days of full compliance by the inmate, whichever is sooner.

18 (2)(A) The term of electronic monitoring shall not exceed the  
19 maximum number of years of imprisonment or supervision to which the inmate  
20 could be sentenced.

21 (B) The length of time the defendant participates in an  
22 electronic monitoring program and any good-time credit awarded shall be  
23 credited against the defendant's sentence.

24  
25 16-93-716. Parole supervision.

26 (a)(1) The Parole Board shall establish written policies and  
27 procedures governing the supervision of parolees designed to enhance public  
28 safety and to assist the parolees in reintegrating into society.

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

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

34 (b) A parole officer shall:

35 (1) Investigate each case referred to him or her by the director  
36 of the Parole Board, the Department of Community Correction, or the

1 prosecuting attorney;

2 (2) Furnish to each parolee under his or her supervision a  
3 written statement of the conditions of parole and instruct the parolee that  
4 he or she must stay in compliance with the conditions of parole or risk  
5 revocation under § 16-93-705;

6 (3) Develop a case plan for each individual who is assessed as  
7 being moderate to high risk to reoffend based on the risk and needs  
8 assessment that targets the criminal risk factors identified in the  
9 assessment, is responsive to individual characteristics, and provides  
10 supervision of offenders according to that case plan;

11 (4) Stay informed of the parolee's conduct and condition through  
12 visitation, required reporting, or other methods and shall report to the  
13 Parole Board that information upon request;

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

17 (6)(A) Conduct a validated risk-needs assessment of the parolee,  
18 including without limitation criminal risk factors and specific individual  
19 needs.

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

22 (7) Make decisions with the assistance of the risk-needs  
23 assessment that are consistent with evidence-based practices on the type of  
24 supervision and services necessary to each parolee; and

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

28 (c)(1) The Parole Board and the Department of Community Correction  
29 shall allocate resources, including the assignment of parole officers, to  
30 focus on moderate-risk and high-risk offenders as determined by the validated  
31 risk-needs assessment provided in subdivision (b)(6) of this section.

32 (2) The Parole Board and Department of Community Correction  
33 shall require each public and private treatment and service provider that  
34 receives state funds for the treatment of or service for parolees to use  
35 evidence-based programs and practices.

36 (d)(1) The Parole Board and Department of Community Correction shall

1 have the authority to sanction a parolee administratively without engaging  
 2 the revocation process under § 16-93-705.

3 (2)(A) The Department of Community Correction shall develop an  
 4 intermediate sanctions procedure and grid to guide a parole officer in  
 5 determining the appropriate response to a violation of conditions of  
 6 supervision.

7 (B) Intermediate sanctions administered by the Department  
 8 of Community Correction are required to conform to the sanctioning grid.

9 (3) Intermediate sanctions shall include without limitation:

10 (A) Day reporting;

11 (B) Community service;

12 (C) Increased substance abuse screening or treatment or  
 13 both;

14 (D) Increased monitoring, including electronic monitoring  
 15 and home confinement; and

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

18 (ii) Incarceration as an intermediate sanction shall  
 19 not be used more than ten (10) times, and no parolee shall accumulate more  
 20 than thirty (30) days incarceration as an intermediate sanction before the  
 21 parole officer files for revocation under § 16-93-706.

22  
 23  
 24 SECTION 100. Arkansas Code Title 16, Chapter 93, Subchapter 10 is  
 25 repealed.

26 ~~Subchapter 10~~

27 ~~—Community Service Work—Acts 1989, No. 957~~

28 ~~16-93-1001. Purpose.~~

29 ~~(a) The congested prison system has resulted in a number of changes~~  
 30 ~~within the criminal justice system that do not appear readily to the public~~  
 31 ~~eye. One major problem is that we have lost an interim sentencing alternative~~  
 32 ~~between placing a person on probation or a suspended sentence or sending that~~  
 33 ~~person to the prison system. This gap was filled in the past by incarcerating~~  
 34 ~~a person who received a felony suspended sentence which included, as a~~  
 35 ~~condition of the sentence, a period of incarceration in a local detention~~  
 36 ~~facility or incarcerating a person who received a misdemeanor sentence of up~~

1 to one (1) year in such a facility. As the prison system backlog inundated  
 2 county detention facilities, those spaces were no longer available for these  
 3 types of sentences. A result of the insufficient bedspace in county detention  
 4 facilities has been that more people are actually being sent to the prison  
 5 system in cases where incarceration in county detention facilities is a  
 6 viable alternative punishment.

7 (b) This subchapter will help bridge the gap that has been created.  
 8 There are incentives for all facets of society. First, although the person  
 9 sentenced will be incarcerated, he or she does have an opportunity to "work"  
 10 his or her way out of being housed in the prison system. Also, the good time  
 11 incentive allows the prisoner to reduce his or her period of incarceration,  
 12 not only benefiting him or her, but also making it conducive for sheriffs to  
 13 implement work projects and free up their jail space for more violent  
 14 offenders. Budgetary cutbacks over the past five (5) years, for example, in  
 15 revenue sharing funds from the federal government, have resulted in many  
 16 community projects being neglected. An easy example is the clean-up of our  
 17 cities, towns, and highways of litter and debris. From the public's  
 18 standpoint, this subchapter would most importantly provide a mechanism for  
 19 providing these valuable services to the public at a minimal cost. It is  
 20 believed that the public will approve of the use of manual labor by persons  
 21 as a just punishment.

22  
 23 ~~16-93-1002. Definitions.~~

24 ~~As used in this subchapter:~~

25 (1) ~~"Community work project" means any program in which county jail~~  
 26 ~~inmates are allowed to work under the supervision of governmental agencies on~~  
 27 ~~projects on public lands, buildings, roads, parks, and public rights-of-way~~  
 28 ~~designed to benefit the governmental unit employing the inmates;~~

29 (2) ~~"Eligible offender" means any person convicted of a misdemeanor~~  
 30 ~~offense or felony offense other than a capital felony offense, murder in the~~  
 31 ~~first degree, murder in the second degree, rape, kidnapping, aggravated~~  
 32 ~~robbery, driving while intoxicated, negligent homicide, or the delivery,~~  
 33 ~~possession with intent to deliver, or manufacture of any controlled substance~~  
 34 ~~in violation of the Uniform Controlled Substances Act, § 5-64-101 et. seq.;~~  
 35 ~~and~~

36 (3) ~~"Work incentive credit" means that an inmate who voluntarily~~

1 ~~agrees to be sentenced under the appropriate provisions of this subchapter,~~  
2 ~~and successfully performs such services, shall be entitled to receive up to~~  
3 ~~three (3) days credit as designated by the sentencing court toward completion~~  
4 ~~of the inmate's sentence for each day of such service performed.~~

5  
6 ~~16-93-1003. Provisions supplemental.~~

7 ~~This subchapter is supplemental to other alternative sentencing laws~~  
8 ~~and nothing in this subchapter shall repeal any provision of any law~~  
9 ~~providing for alternative sentencing nor shall this subchapter repeal any act~~  
10 ~~passed during the 1989 Regular Session of the General Assembly relating to~~  
11 ~~alternative sentencing.~~

12  
13 ~~16-93-1004. Procedure—Medical and legal costs.~~

14 ~~(a) Any consenting eligible offender who is convicted of a felony or~~  
15 ~~misdemeanor or who enters a plea of guilty or nolo contendere to a felony or~~  
16 ~~misdemeanor may upon recommendation of the prosecuting attorney be sentenced~~  
17 ~~under this subchapter.~~

18 ~~(b) The sentencing court may suspend imposition of the offender's~~  
19 ~~sentence for a period not to exceed the period of years that is the maximum~~  
20 ~~penalty for the offense for which convicted upon condition that the defendant~~  
21 ~~be incarcerated in a county detention facility to participate in a community~~  
22 ~~work project. In order for the defendant to participate in this program,~~  
23 ~~space must be available in the county detention facility as certified by the~~  
24 ~~county sheriff to the Department of Correction. The length of such community~~  
25 ~~work project service and incarceration shall not exceed eighteen (18) months~~  
26 ~~on a felony with work incentive credit or, in the case of a misdemeanor, the~~  
27 ~~maximum length of incarceration provided for the misdemeanor reduced by the~~  
28 ~~work incentive credit.~~

29 ~~(c) In the event that during an offender's service under a community~~  
30 ~~work project sentence pursuant to this subchapter, the offender withdraws his~~  
31 ~~or her consent to participate in the project, the sentencing court shall have~~  
32 ~~the offender brought before the court within a reasonable time after~~  
33 ~~receiving such notice from either the sheriff of the county wherein the~~  
34 ~~inmate is incarcerated or the prosecuting attorney of that county and make~~  
35 ~~inquiries of the offender to determine whether or not consent to proceed~~  
36 ~~under the program is being withdrawn. In the event that the court finds that~~

1 ~~the offender is withdrawing consent to participate in the community work~~  
2 ~~project, the court shall remand the offender to the department if the offense~~  
3 ~~was a felony or, in the case of a misdemeanor, to the sheriff of the county~~  
4 ~~wherein the offense was committed, to serve the remaining portion of the~~  
5 ~~offender's sentence. The offender shall be entitled to all good time and~~  
6 ~~parole eligibility considerations as provided for by law. Any portion of the~~  
7 ~~sentence which was suspended by the court at the time of the original~~  
8 ~~sentence shall not be affected by the court's removal of an offender from~~  
9 ~~participating in the community work project.~~

10 ~~(d) In the event that the offender's conduct while participating in a~~  
11 ~~community work project is unsatisfactory, the court may upon petition filed~~  
12 ~~by the prosecuting attorney schedule a hearing to determine if the offender~~  
13 ~~should be allowed to continue to participate in the community work project.~~  
14 ~~This hearing shall follow the same format and accord the offender the same~~  
15 ~~safeguards as the revocation procedure as outlined in § 5-4-309. The burden~~  
16 ~~of proof necessary for revocation of a sentence under this subchapter shall~~  
17 ~~be a preponderance of the evidence that the offender's conduct has not been~~  
18 ~~satisfactory while participating in a community work project. If the court~~  
19 ~~determined that the offender's conduct has not been satisfactory, the court~~  
20 ~~shall remand the offender to the department if the offense was a felony or,~~  
21 ~~in the case of a misdemeanor, to the sheriff of the county wherein the~~  
22 ~~offense was committed, to serve all or a part of the remaining portion of the~~  
23 ~~offender's original sentence. The offender shall be entitled to all good time~~  
24 ~~and parole eligibility considerations as provided for by law.~~

25 ~~(e) Nothing in this subchapter shall grant any offender the right to~~  
26 ~~be sentenced under these provisions as a matter of right.~~

27 ~~(f) The state shall be responsible for the cost of medical treatment~~  
28 ~~of an eligible offender sentenced pursuant to the felony provisions of this~~  
29 ~~subchapter.~~

30 ~~(1) That is the result of injuries sustained on the work site or~~  
31 ~~during transportation to and from the work site by a governmental agency; or~~

32 ~~(2) That is the result of illness or injuries sustained by~~  
33 ~~persons committed to the county jail and who are assigned to a community work~~  
34 ~~project. However, the department may transfer any inmate committed to jail~~  
35 ~~pursuant to this subchapter to a medical or treatment facility it deems~~  
36 ~~appropriate for the treatment.~~



1       ~~(g) The state shall be responsible for any liability incurred as the~~  
2 ~~result of implementation and execution of this subchapter involving persons~~  
3 ~~sentenced as eligible offenders for felony offenses who, pursuant to this~~  
4 ~~subchapter, may be injured while on a community work project or while being~~  
5 ~~transported to or from a community work project by a governmental agency.~~

6       ~~(h) The state shall reimburse the counties for housing inmates~~  
7 ~~sentenced pursuant to the felony provisions of this subchapter at a rate to~~  
8 ~~be determined by the Board of Corrections.~~

9  
10       SECTION 101. Arkansas Code Title 16, Chapter 93, Subchapter 11 is  
11 repealed.

12       ~~Subchapter 11~~

13       ~~—Community Service Work—Acts 1989, No. 613~~

14  
15       ~~16-93-1101. Definitions.~~

16       ~~As used in this subchapter:~~

17       ~~(1) “Community work project” means any program in which county jail~~  
18 ~~inmates are allowed to work under the supervision of governmental agencies on~~  
19 ~~projects on public lands, buildings, roads, parks, and public rights-of-way~~  
20 ~~designed to benefit the governmental unit utilizing the inmates;~~

21       ~~(2) “Eligible offender” means any person convicted of a misdemeanor~~  
22 ~~offense or felony offense other than a capital felony offense, murder in the~~  
23 ~~first degree, murder in the second degree, rape, kidnapping, aggravated~~  
24 ~~robbery, second or subsequent driving while intoxicated offenses, negligent~~  
25 ~~homicide, or the delivery, possession with intent to deliver, or manufacture~~  
26 ~~of any controlled substance in violation of the Arkansas Drug Abuse Control~~  
27 ~~Act, § 20-64-301 et seq.; and~~

28       ~~(3) “Work incentive credit” means that an inmate who voluntarily~~  
29 ~~agrees to be sentenced under the appropriate provisions of this subchapter,~~  
30 ~~and successfully performs such services, shall be entitled to receive one (1)~~  
31 ~~day credit as designated by the sentencing court toward completion of the~~  
32 ~~inmate’s sentence for each day of such service performed.~~

33  
34       ~~16-93-1102. Procedure generally.~~

35       ~~(a) Any consenting eligible offender who is convicted of a felony or~~  
36 ~~misdemeanor, or who enters a plea of guilty or nolo contendere to a felony or~~

1 ~~misdemeanor, may upon recommendation of the court be sentenced under this~~  
2 ~~subchapter.~~

3 ~~(b) The sentencing court may suspend imposition of the offender's~~  
4 ~~sentence for a period not to exceed the period of years that is the maximum~~  
5 ~~penalty for the offense convicted upon condition that the defendant be either~~  
6 ~~incarcerated in a county detention facility or, at the discretion of the~~  
7 ~~court, reside at his or her principal residence under the supervision of a~~  
8 ~~probation officer and participate in a community work project. The length of~~  
9 ~~such community work project service and incarceration shall not exceed~~  
10 ~~eighteen (18) months on a felony with work incentive credit or, in the case~~  
11 ~~of a misdemeanor, the maximum length of incarceration provided for the~~  
12 ~~misdemeanor reduced by the work incentive credit.~~

13 ~~(c) In the event that during an offender's service under a community~~  
14 ~~work project pursuant to this subchapter, the offender withdraws his~~  
15 ~~consent to participate in the project, the sentencing court shall have the~~  
16 ~~offender brought before the court within a reasonable time after receiving~~  
17 ~~such notice from either the sheriff of the county wherein the inmate is~~  
18 ~~incarcerated or under probation, or the prosecuting attorney of that county,~~  
19 ~~and the court shall make inquiries of the offender to determine whether or~~  
20 ~~not consent to proceed under the program is being withdrawn. In the event~~  
21 ~~that the court finds that the offender is withdrawing consent to participate~~  
22 ~~in the community work project, the court shall remand the offender to the~~  
23 ~~Department of Correction if the offense was a felony or, in the case of a~~  
24 ~~misdemeanor, to the sheriff of the county wherein the offense was committed,~~  
25 ~~to serve the remaining portion of the offender's sentence. The offender~~  
26 ~~shall be entitled to all good time and parole eligibility considerations as~~  
27 ~~provided for by law. Any portion of the sentence which was suspended by the~~  
28 ~~court at the time of the original sentence shall not be affected by the~~  
29 ~~court's removal of an offender from participating in the community work~~  
30 ~~project.~~

31 ~~(d) In the event that the offender's conduct while participating in a~~  
32 ~~community work project is unsatisfactory, the court may upon petition filed~~  
33 ~~by the prosecuting attorney schedule a hearing to determine if the offender~~  
34 ~~should be allowed to continue to participate in the community work project.~~  
35 ~~This hearing shall follow the same format and accord the offender the same~~  
36 ~~safeguards as the revocation procedure as outlined in § 5-4-309. The burden~~

1 ~~of proof necessary for revocation of a sentence under this subchapter shall~~  
2 ~~be a preponderance of the evidence that the offender's conduct has not been~~  
3 ~~satisfactory while participating in a community work project. If the court~~  
4 ~~determines that the offender's conduct has not been satisfactory, the court~~  
5 ~~shall remand the offender to the department if the offense was a felony or,~~  
6 ~~in the case of a misdemeanor, to the sheriff of the county wherein the~~  
7 ~~offense was committed, to serve all or part of the remaining portion of the~~  
8 ~~offender's original sentence. The offender shall be entitled to all good time~~  
9 ~~and parole eligibility considerations as provided for by law.~~

10  
11 ~~16-93-1103. Rules and regulations.~~

12 ~~The Board of Corrections shall promulgate necessary rules and~~  
13 ~~regulations to be followed by governmental entities in the supervision of~~  
14 ~~eligible offenders utilized under the provisions of this subchapter.~~

15  
16 ~~16-93-1104. Immunity from liability.~~

17 ~~All governmental agencies and units utilizing eligible offenders in~~  
18 ~~community work projects shall be immune from liability and suit for damages,~~  
19 ~~and no tort action shall lie against any governmental agency or unit because~~  
20 ~~of the acts of eligible offenders utilized under the provisions of this~~  
21 ~~subchapter.~~

22  
23 ~~16-93-1105. Sentence optional.~~

24 ~~Nothing in this subchapter shall grant any offender the right to be~~  
25 ~~sentenced under these provisions as a matter of right.~~

26  
27 SECTION 102. Arkansas Code § 16-93-1206 is repealed.

28 ~~16-93-1206. Sentencing alternatives.~~

29 ~~(a)(1) The trial court may require that either a presentence~~  
30 ~~investigation be conducted by either the probation officer or presentence~~  
31 ~~investigation officer assigned to the court or may require that the defense~~  
32 ~~counsel of the person, the prosecuting authority, the probation officer, and~~  
33 ~~other persons whom the trial court believes have knowledge or information~~  
34 ~~relevant to the sentencing of the convicted person submit to the trial court~~  
35 ~~the information in writing for the sentencing phase of the trial.~~

36 ~~(2) Either the presentence investigation or information gathered~~

1 by the above mentioned parties shall be forwarded, with the commitment, to be  
2 retained in the offender's file.

3 (b) Upon determination by the court that the offender is an eligible  
4 offender and that placement in a community correction program is proper, the  
5 court may utilize the following methods of placement:

6 (1)(A) Suspend the imposition of the sentence or place the  
7 offender on probation, pursuant to § 5-4-104, § 5-4-201 et seq., and §§ 5-4-  
8 301—5-4-311.

9 (B) This sentence may be accompanied by assignment to a  
10 community correction program for a designated period of time commensurate  
11 with the goals of the program assignment and the rules and regulations  
12 established by the Board of Corrections for the operation of community  
13 correction programs.

14 (C) The trial court shall maintain jurisdiction over the  
15 eligible offender sentenced in this manner with supervision outside the  
16 confines of the specific programming provided by probation officers assigned  
17 to the court;

18 (2)(A) In the event a person sentenced under subdivision (b)(1)  
19 of this section violates any terms or conditions of his or her sentence or  
20 term of probation, revocation of the sentence or term of probation shall be  
21 consistent with the procedures established by law for the revocation of  
22 suspended imposition of sentence or probation.

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

28 (C) If committed to the Department of Correction, the  
29 court shall specify if the commitment is for judicial transfer of the  
30 offender to the Department of Community Correction or is a regular  
31 commitment; and

32 (3)(A) Commit the eligible offender to the custody of the  
33 Department of Correction pursuant to this subchapter for judicial transfer to  
34 the Department of Community Correction subject to the following:

35 (i) That the sentence imposed provides that the  
36 offender shall serve no more than two (2) years of confinement, with credit

1 ~~for meritorious good time, with initial placement in a Department of~~  
2 ~~Community Correction facility; and~~

3 ~~(ii) That the initial placement in the Department of~~  
4 ~~Community Correction is conditioned upon the offender's continuing~~  
5 ~~eligibility for Department of Community Correction placement and the~~  
6 ~~offender's compliance with all applicable rules and regulations established~~  
7 ~~by the board for community correction programs.~~

8 ~~(B) Post-prison supervision shall accompany and follow~~  
9 ~~programming when appropriate.~~

10 ~~(c) No offender may be excluded from placement in a community~~  
11 ~~correction program based solely on the offender's inability to speak, read,~~  
12 ~~write, or hear or to understand English.~~

13  
14 SECTION 103. Arkansas Code Title 16, Chapter 93, Subchapter 13 is  
15 repealed.

16 Subchapter 13—Criteria for Transfer to Community Punishment Programs  
17 16-93-1301. Transfer provisions.

18 ~~(a) As used in this subchapter, "felonies" means those crimes~~  
19 ~~classified as Class Y, Class A, Class B, Class C, Class D, or unclassified~~  
20 ~~felonies by the laws of this state.~~

21 ~~(b)(1) Persons who committed felonies prior to January 1, 1994, and~~  
22 ~~who were convicted and incarcerated for those felonies shall be eligible for~~  
23 ~~release on parole in accordance with the parole eligibility law in effect at~~  
24 ~~the time the crime was committed.~~

25 ~~(2) Persons who committed target offenses under the Community~~  
26 ~~Punishment Act, § 16-93-1201 et seq., prior to January 1, 1994, and who have~~  
27 ~~not been sentenced to a term of incarceration may waive the right to be~~  
28 ~~released under the parole eligibility law in effect at the time the crimes~~  
29 ~~were committed and shall become eligible for judicial transfer pursuant to~~  
30 ~~the transfer provisions provided in subdivision (c)(2) of this section.~~

31 ~~(3) Persons who have committed felonies who are within a target~~  
32 ~~group as currently defined under § 16-93-1202(10) and who are released on~~  
33 ~~parole shall be eligible, pursuant to rules and regulations established by~~  
34 ~~the Parole Board, for commitment to a community correction facility if they~~  
35 ~~are found to be in violation of any of their parole conditions, unless the~~  
36 ~~parole violation constitutes a nontarget felony offense.~~

1           ~~(c) Persons who commit felonies on or after January 1, 1994, and who~~  
2 ~~shall be convicted and incarcerated for those felonies shall be eligible for~~  
3 ~~transfer to community correction as follows:~~

4           ~~(1)(A) Inmates under sentence of death or life imprisonment~~  
5 ~~without parole shall not be eligible for transfer, but may be pardoned or~~  
6 ~~have their sentences commuted by the Governor as provided by law.~~

7           ~~(B) Inmates sentenced to life imprisonment shall not be~~  
8 ~~eligible for transfer unless the sentences are commuted to a term of years by~~  
9 ~~executive clemency.~~

10           ~~(C) Upon commutation, inmates shall be eligible for~~  
11 ~~transfer as provided in this subchapter;~~

12           ~~(2)(A)(i)(a) Offenders convicted of a target offense under the~~  
13 ~~Community Punishment Act, § 16-93-1201 et seq., may be committed to the~~  
14 ~~Department of Correction and judicially transferred to the Department of~~  
15 ~~Community Correction by specific provision in the commitment that the trial~~  
16 ~~court order such a transfer.~~

17           ~~(b) No other offenders are eligible for~~  
18 ~~transfer to a Department of Community Correction facility.~~

19           ~~(ii) A copy of the commitment shall be forwarded~~  
20 ~~immediately to the Department of Correction and to the Department of~~  
21 ~~Community Correction.~~

22           ~~(iii) In the event that an offender is sentenced to~~  
23 ~~the Department of Correction without judicial transfer on one (1) sentence~~  
24 ~~and concurrently sentenced to the Department of Correction with judicial~~  
25 ~~transfer on another sentence, the offender shall remain in the Department of~~  
26 ~~Correction, and the sentence with judicial transfer may be discharged in the~~  
27 ~~same manner as those offenders transferred back to the Department of~~  
28 ~~Correction.~~

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

31           ~~(C) The Department of Community Correction shall provide~~  
32 ~~for the appropriate disposition of the offender as expeditiously as~~  
33 ~~practicable under rules and regulations developed by the Board of~~  
34 ~~Corrections.~~

35           ~~(D) The offender shall not be transported to the~~  
36 ~~Department of Correction on the initial placement in a Department of~~

1 ~~Community Correction facility pursuant to a judicial transfer.~~

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

6 ~~(F) An offender who is sentenced after July 31, 2007, and~~  
7 ~~who is transferred back to the Department of Correction for administrative~~  
8 ~~reasons is eligible for transfer to Department of Community Correction~~  
9 ~~supervision in the same manner as an offender who is sentenced to the~~  
10 ~~Department of Correction without a judicial transfer to the Department of~~  
11 ~~Community Correction; and~~

12 ~~(3)(A) All other classified or unclassified felons who are~~  
13 ~~incarcerated therefor shall be eligible for transfer to community punishment~~  
14 ~~after having served one third ( $\frac{1}{3}$ ) or one half ( $\frac{1}{2}$ ), with credit for~~  
15 ~~meritorious good time, of their sentences depending on the seriousness~~  
16 ~~determination made by the Arkansas Sentencing Commission, or one half ( $\frac{1}{2}$ ),~~  
17 ~~with credit for meritorious good time, of the time to which their sentences~~  
18 ~~are commuted by executive clemency.~~

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

24  
25 ~~16-93-1302. Transfer procedures.~~

26 ~~(a)(1)(A) Inmates under sentence for all felonies except those listed~~  
27 ~~in subsection (b) of this section will be transferred from the Department of~~  
28 ~~Correction to the Department of Community Correction subject to rules and~~  
29 ~~regulations promulgated by the Board of Corrections and conditions set by the~~  
30 ~~Parole Board.~~

31 ~~(B) This review may be conducted without a hearing when~~  
32 ~~the inmate has not received a major disciplinary report against him or her~~  
33 ~~which resulted in the loss of good time, there has not been a request by a~~  
34 ~~victim to have input on transfer conditions, and there is no indication in~~  
35 ~~the risk/needs assessment review that special conditions need to be placed on~~  
36 ~~the inmate.~~

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

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

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

9                   ~~(ii) To deny transfer based on a set of established~~  
 10 ~~criteria and to accompany the denial with a course of action to be undertaken~~  
 11 ~~by the inmate to rectify the Parole Board concerns.~~

12           ~~(C) Upon completion of the course of action determined by~~  
 13 ~~the Parole Board, after final review of the inmate's file to ensure~~  
 14 ~~successful completion, the Parole Board shall authorize the inmate's transfer~~  
 15 ~~to the Department of Community Correction in accordance with administrative~~  
 16 ~~policies and procedures governing the transfer and subject to conditions~~  
 17 ~~attached to the transfer.~~

18           ~~(3) Should an inmate fail to fulfill the course of action~~  
 19 ~~outlined by the Parole Board to facilitate transfer to community correction,~~  
 20 ~~it shall be the responsibility of the inmate to petition the Parole Board for~~  
 21 ~~rehearing.~~

22           ~~(b)(1) Inmates under sentence for the following Class Y felonies shall~~  
 23 ~~be eligible for discretionary transfer to the Department of Community~~  
 24 ~~Correction by the Parole Board after having served the time required as set~~  
 25 ~~by the Arkansas Sentencing Commission with credit for meritorious good time:~~

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

27                   ~~(B) Kidnapping, § 5-11-102;~~

28                   ~~(C) Rape, § 5-14-103;~~

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

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

31                   ~~(F) Engaging in a continuing criminal enterprise, § 5-64-~~

32 ~~405; and~~

33                   ~~(G) The manufacture or delivery of a schedule I or~~  
 34 ~~schedule II controlled substance which by aggregate weight including~~  
 35 ~~adulterants or diluents is greater than twenty eight grams (28 g), § 5-64-~~  
 36 ~~401(a)(1).~~



1           ~~(2)(A) Review of inmates convicted of the enumerated offenses in~~  
2 ~~subdivision (b)(1) of this section shall be based upon policies and~~  
3 ~~procedures adopted by the Parole Board for the review.~~

4           ~~(B) The policies and procedures shall include provision~~  
5 ~~for notification of victims, that a hearing shall be held and records kept of~~  
6 ~~such proceedings, and that there be a listing of the criteria upon which a~~  
7 ~~denial may be based.~~

8           ~~(3) All transfers of offenders specified in this subsection~~  
9 ~~shall be issued upon order, duly adopted, of the Parole Board in accord with~~  
10 ~~such policies and procedures.~~

11          ~~(c)(1) The course of action required by the Parole Board shall not be~~  
12 ~~outside the current resources of the Department of Correction nor the~~  
13 ~~conditions set be outside the current resources of the Department of~~  
14 ~~Community Correction.~~

15          ~~(2) However, the departments shall strive to accommodate the~~  
16 ~~actions required by the Board of Corrections to the best of their ability.~~

17          ~~(d) Transfer is not an award of clemency and it shall not be~~  
18 ~~considered as a reduction of sentence or a pardon.~~

19          ~~(e) Every inmate while on transfer status shall remain in the legal~~  
20 ~~eustody of the Department of Correction, under the supervision of the~~  
21 ~~Department of Community Correction, and subject to the orders of the Parole~~  
22 ~~Board.~~

23          ~~(f) Inmates who are sentenced under the provisions of § 5-4-501(e) or~~  
24 ~~(d) for serious violent felonies or felonies involving violence may be~~  
25 ~~considered eligible for parole or for community correction transfer upon~~  
26 ~~reaching regular parole or transfer eligibility, but only after reaching a~~  
27 ~~minimum age of fifty five (55) years.~~

28  
29          ~~16-93-1303. Computation of sentence.~~

30          ~~(a)(1) Time served shall be deemed to begin on the day sentence is~~  
31 ~~imposed, not on the day a prisoner is received by the Department of~~  
32 ~~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           ~~16-93-1304. Revocation of transfer.~~

9           ~~(a) In the event an offender transferred under the provisions of this~~  
10 ~~subchapter violates the terms or conditions of his transfer, a hearing shall~~  
11 ~~follow all applicable legal requirements and shall be subject to any~~  
12 ~~additional policies, rules, and regulations set by the Parole Board.~~

13           ~~(b)(1) In the event an offender transferred under the provisions of~~  
14 ~~this subchapter is found to be or becomes ineligible for transfer into a~~  
15 ~~Department of Community Correction facility, he or she shall be transported~~  
16 ~~to the Department of Correction to serve the remainder of his sentence.~~

17           ~~(2) Notice of the ineligibility and the reasons therefor shall~~  
18 ~~be provided to the offender, and a hearing may be requested before the board~~  
19 ~~if the offender contests the factual basis of the ineligibility. Otherwise,~~  
20 ~~the board may administratively approve the transfer to the Department of~~  
21 ~~Correction.~~

22           ~~(c) An offender who is judicially transferred to a Department of~~  
23 ~~Community Correction facility and subsequently transferred back to the~~  
24 ~~Department of Correction by the board for disciplinary or administrative~~  
25 ~~reasons may become eligible for any further transfer under § 16-93-~~  
26 ~~1301(c)(2)(E) and (F).~~

27  
28           SECTION 104. Arkansas Title 16, Chapter 93, Subchapter 15 is repealed.

29           ~~Subchapter 15 — Parole — Sentence Served in County Jail~~

30           ~~16-93-1501. Parole for inmates who have served their term of~~  
31 ~~imprisonment in a county jail prior to being processed into the Department of~~  
32 ~~Correction.~~

33           ~~Subject to conditions set by the Parole Board, all offenders convicted~~  
34 ~~of a felony, and sentenced to a term of imprisonment of two (2) years or less~~  
35 ~~in the Department of Correction, and who have served their term of~~  
36 ~~imprisonment in a county jail prior to being processed into the Department of~~

1 ~~Correction, may be paroled from the Department of Correction county jail~~  
2 ~~backup facility directly to the Department of Community Correction under~~  
3 ~~parole supervision, and upon eligibility determination, processed for release~~  
4 ~~by the board.~~

5  
6 ~~16-93-1502. Program eligibility.~~

7 ~~(a) Offenders who have been found guilty of or pleaded guilty or nolo~~  
8 ~~contendere to a violent offense as defined by § 12-12-1103(11) [repealed] or~~  
9 ~~a Class Y felony offense shall be ineligible to participate in the program~~  
10 ~~established by this subchapter.~~

11 ~~(b) As determined by the county sheriff, offenders who have committed~~  
12 ~~violent or sexual acts while incarcerated in a county jail facility shall be~~  
13 ~~ineligible to participate in the program established by this subchapter.~~

14  
15 SECTION 105. Arkansas Code Title 16, Chapter 93 is amended to add a  
16 new subchapter to read as follows:

17 Subchapter 17 – Swift and Certain Accountability on Probation Pilot  
18 Program

19 16-93-1701. Establishment.

20 The Administrative Office of the Courts shall:

21 (1) Create the Swift and Certain Accountability on Probation  
22 Pilot Program, awarding up to five (5) grants in the program's first year to  
23 counties or judicial districts requesting funds to establish probation  
24 programs to be administered by the Department of Community Correction  
25 designed to reduce recidivism by requiring swift, certain, and graduated  
26 sanctions for probationers in noncompliance;

27 (2) Possess the discretion to determine the appropriate number  
28 of grants based on the amount of money allocated for the grant program and  
29 the capacity of the applicants based on submitted proposals to successfully  
30 implement and evaluate the program;

31 (3) Ensure that grants awarded under this subchapter are awarded  
32 in a manner that promotes the strongest proposals and evaluation designs,  
33 that have the broadest impact and that are evenly geographically distributed;  
34 and

35 (4) Employ a person who shall have as one-half (1/2) of his or  
36 her designated job duties the management of the program established under

1 this subchapter.

2  
3 16-93-1702. Application.

4 (a) A county or judicial district may apply for a grant award under  
5 this subchapter by submitting a written application to the Administrative  
6 Office of the Courts.

7 (b) The application shall include the following:

8 (1) A description of the proposed probation program and the need  
9 in the county or judicial district for the establishment of a probation  
10 program under this subchapter;

11 (2) A description of the long-term strategy and a detailed plan  
12 of implementation, including how the county or judicial district intends to  
13 pay for the probation program after the grant funding is exhausted;

14 (3) A certification that all government or private entities  
15 that would be affected by the proposed probation program have been  
16 appropriately consulted regarding the development of the probation program;

17 (4) A description of the coordination plan involving all  
18 government or private entities in the implementation process;

19 (5) Identification of the governmental and judicial partners in  
20 the proposed probation program, including the chief judge of the circuit  
21 court as well as other participating judges in the applicable jurisdiction,  
22 the court administrator, the probation administrator, the county sheriff, the  
23 prosecuting attorney, the public defender, applicable private defense  
24 attorneys, applicable municipal law enforcement administrators, and  
25 applicable treatment provider administrators; and

26 (6) A description of how and assurances that the applicant will  
27 collect key process measures, including the:

28 (A) Number of probationers enrolled in the program;

29 (B) Frequency of drug testing probationers;

30 (C) Positive drug test rate and other rates of non-  
31 compliance with the measurable conditions of supervision;

32 (D) Kinds of sanctions available for a violation of  
33 probation;

34 (E) Kinds of rewards available for positive behavior;

35 (F) Certainty of the application of an appropriate  
36 sanction;

1                   (G) Average period of time from detection of a violation  
2 to issuance of a sanction for the violation;

3                   (H) Severity of the sanction; and

4                   (I) Time between the completion of the sanction and a  
5 subsequent violation, if any.

6  
7           16-93-1703. Grant uses.

8           (a) A grant awarded under this subchapter shall be used by the grantee  
9 to establish probation programs that:

10                   (1) Identify probationers for enrollment in the program,  
11 through, among other tools, a validated risk-needs assessment tool, who are:

12                           (A) Serving a term of probation;

13                           (B) At high risk of failing to observe the conditions of  
14 supervision; and

15                           (C) At high risk of being returned to incarceration as a  
16 result of that failure;

17                   (2) Notify probationers of the rules of the probation program,  
18 and consequences for violating those rules;

19                   (3) Monitor probationers for illicit drug use with regular and  
20 rapid-result drug screening;

21                   (4) Monitor probationers for violations of other rules and  
22 probation terms, including failure to pay court-ordered financial obligations  
23 such as child support or victim restitution;

24                   (5) Respond to violations of those rules with immediate arrest  
25 of the violating probationer and swift and certain modification of the  
26 conditions of probation, including imposition of short jail stays;

27                   (6) Immediately respond to probationers who have absconded from  
28 supervision with service of bench warrants and immediate sanctions;

29                   (7)(A) Provide rewards to probationers who comply with those  
30 rules.

31                           (B) Rewards shall include without limitation:

32                                   (i) Reduced reporting requirements;

33                                   (ii) Less frequent drug testing;

34                                   (iii) Certificates of achievement;

35                                   (iv) Other rewards as determined by the locality;

36 and

1                   (v) Early termination of the sentence;

2                   (8) Ensure funding for and referral to substance abuse treatment  
3 for probationers who repeatedly fail to refrain from illicit drug use;

4                   (9) Establish procedures to terminate program participation by,  
5 and initiate revocation to a term of incarceration for probationers who  
6 habitually fail to abide by program rules and pose a threat to public safety;  
7 and

8                   (10) Include regular coordination meetings for key partners of  
9 the program, including the partners identified under § 16-93-1702(b)(5).

10                  (b) As used in this section, "validated risk-needs assessment" means a  
11 determination of a person's risk to reoffend and the needs that, when  
12 addressed, reduce the risk to reoffend through the use of an actuarial  
13 assessment tool that assesses the dynamic and static factors that drive  
14 criminal behavior.

15  
16                  16-93-1704. Determination of program savings.

17                  (a) Each county or judicial district receiving a grant under this  
18 subchapter shall:

19                   (1) Not later than twelve (12) months after an initial grant  
20 award under this section and annually thereafter through the end of the grant  
21 period calculate the amount of cost savings and costs averted, if any,  
22 resulting from the reduced incarceration achieved through the grant program;  
23 and

24                   (2) Report to the Administrative Office of the Courts:

25                           (A) The amount calculated under subdivision (a)(1) of this  
26 section; and

27                           (B) The portion of the amount, if any, that will be  
28 reinvested for expansion of the grant program.

29                  (b) The Administrative Office of the Courts shall:

30                   (1) Annually evaluate:

31                           (A) The methods used by courts to calculate the cost  
32 savings reported under subdivision (a)(1) of this section; and

33                           (B) The use of the savings by the courts to reinvest for  
34 expansion of the grant program; and

35                   (2) Provide guidance, assistance, and recommendations to such  
36 courts relating to the potential reinvestment of such savings for expansion

1 of the grant program.

2 (c) The Administrative Office of the Courts shall select an entity to  
3 serve as the program initiative evaluation coordinator to:

4 (1) Analyze and provide feedback on the measures and outcomes  
5 the individual program initiative programs are required to collect and  
6 conduct, respectively, in accordance with § 16-93-1702(b)(6);

7 (2) Ensure consistent tracking of the progress of the  
8 demonstration programs carried out under this section, including such  
9 measures and outcomes; and

10 (3) Ensure that the aggregate data from all such programs is  
11 available to each of the programs and to the Administrative Office of the  
12 Courts.

13 (d) The Administrative Office of the Courts shall report annually to  
14 the General Assembly the results of the program initiative carried out under  
15 this subchapter.

16  
17 SECTION 106. Arkansas Code § 16-98-301 is amended to read as follows:

18 16-98-301. Short title and definitions.

19 (a) This subchapter shall be known as the "Arkansas Drug Court Act".

20 (b) As used in this subchapter:

21 (1) "Evidence-based practices" means practices proven through  
22 research to reduce recidivism;

23 (2) "Validated risk-needs assessment" means a determination of a  
24 person's risk to reoffend and the needs that, when addressed, reduce the risk  
25 to reoffend through the use of an actuarial assessment tool that assesses the  
26 dynamic and static factors that drive criminal behavior; and

27 (3) "Violent felony offense" means an offense that is punishable  
28 by a term of imprisonment exceeding one (1) year, and during the course of  
29 the offense:

30 (A)(i) The person carried, possessed, or used a firearm or  
31 other dangerous weapon; and

32 (ii) The use of deadly force was used against  
33 another person; or

34 (B) Death or serious physical injury was inflicted upon  
35 another person, regardless of whether death or serious physical injury was an  
36 element of the crime for which the person was convicted.

1  
2 SECTION 107. Arkansas Code § 16-98-302 is amended to read as follows:  
3 16-98-302. Purpose and intent.

4 (a) There is a critical need for judicial intervention and support for  
5 effective treatment programs that reduce the incidence of drug use, drug  
6 addiction, and family separation due to parental substance abuse and drug-  
7 related crimes. It is the intent of the General Assembly for this subchapter  
8 to enhance public safety by facilitating the creation, expansion, and  
9 coordination of drug court programs.

10 (b) The goals of the drug court programs in this state shall be  
11 consistent with the standards adopted by the United States Department of  
12 Justice and recommended by the National Association of Drug Court  
13 Professionals and shall include the following key components:

14 (1) Integration of substance abuse treatment with justice system  
15 case processing;

16 (2) Use of a nonadversarial approach in which prosecution and  
17 defense promote public safety while protecting the right of the accused to  
18 due process;

19 (3) Early identification, with the use of a validated risk-needs  
20 assessment, of eligible moderate to high risk participants and prompt  
21 placement of eligible participants;

22 (4) Access to a continuum of treatment, rehabilitation, and  
23 related services;

24 (5) Frequent testing for alcohol and illicit drugs;

25 (6) A coordinated strategy among the judge, prosecution,  
26 defense, and treatment providers to govern offender compliance;

27 (7) Ongoing judicial interaction with each participant;

28 (8) Monitoring and evaluation of the achievement of program  
29 goals and effectiveness;

30 (9) Continuing interdisciplinary education to promote effective  
31 planning, implementation, and operation; and

32 (10) Development of partnerships with public agencies and  
33 community-based organizations to generate local support and enhance drug  
34 court effectiveness.

35 (c)(1) Drug court programs are specialized court dockets within the  
36 existing structure of the Arkansas court system. Drug court programs offer



1 judicial monitoring of intensive treatment and strict supervision of addicts  
2 in drug and drug-related cases.

3 (2) The creation of a drug court docket and the appointment of a  
4 circuit judge to that docket shall be approved by the administrative judge in  
5 each judicial circuit and made a part of the judicial circuit's  
6 administrative plan required by Supreme Court Administrative Order Number 14.

7 (d) Drug court program success shall be determined by the rate of  
8 recidivism of all drug court participants, including participants who do not  
9 graduate.

10  
11 SECTION 108. Arkansas Code § 16-98-303(b)(2), regarding what services  
12 the drug court program will incorporate from other state agencies, is amended  
13 to read as follows:

14 (2) Subject to an appropriation, funding, and position authorization,  
15 both programmatic and administrative, the Department of Community Correction  
16 shall:

17 (A) Provide positions for persons to serve as probation  
18 officers, drug counselors, and administrative assistants;

19 (B) Provide for drug testing for drug court program  
20 participants;

21 (C) Provide for intensive outpatient treatment for drug court  
22 program participants; ~~and~~

23 (D) Provide for intensive short-term and long-term residential  
24 treatment for drug court program participants; and

25 (E) Develop clinical assessment capacity, including drug  
26 testing, to identify participants with a substance addiction and develop a  
27 treatment protocol that improves the person's likelihood of success.

28  
29 SECTION 109. Arkansas Code § 16-98-303(b)(4), regarding what services  
30 the Administrative Office of the Courts will provide to the drug court  
31 program, is amended to read as follows:

32 (4) Subject to an appropriation, funding, and position authorization,  
33 both programmatic and administrative, the Administrative Office of the Courts  
34 shall:

35 (A) Provide state-level coordination and support for drug court  
36 judges and their programs;

1 (B) Administer funds for the maintenance and operation of local  
2 drug court programs;

3 (C) Provide training and education to drug court judges and  
4 other professionals involved in drug court programs; ~~and~~

5 (D) Operate as a liaison between drug court judges and other  
6 state-level agencies providing services to drug court programs; ~~and~~

7 (E) Develop criteria for determining new drug court locations  
8 that take into account:

9 (1) The current size of the defendant population that  
10 meets the criteria for drug court participation;

11 (2) Recent trends indicating an increasing defendant  
12 population that meets the criteria for drug court participation;

13 (3) Existing drug treatment programs currently in place  
14 and operating through the courts, the county jail, or the Department of  
15 Correction; and

16 (4) The drug court program's use of evidence-based  
17 practices by key partners involved in the prospective drug court including  
18 those to assess the needs of drug court participants in order to effectively  
19 target programming toward high-risk participants.

20  
21 SECTION 110. Arkansas Code § 16-98-303(c)(1), regarding who is not  
22 eligible for drug court, is amended to read as follows:

23 (c)(1) A drug court program shall not be available to any defendant  
24 who:

25 (A) Has a pending charge for a violent criminal charge  
26 felony against him or her; or

27 (B) Has been convicted of a violent felony offense as  
28 defined in this subchapter or adjudicated delinquent as a juvenile of a  
29 violent felony offense; or

30 (C)(i) Is required to register under the Sex Offender  
31 Registration Act of 1997, § 12-12-901 et seq.

32 (ii) The exclusion under subdivision (c)(1)(C)(i) of  
33 this section shall not apply to the offense of prostitution, § 5-70-102.

34  
35 SECTION 111. Arkansas Code § 16-98-306(a), regarding the collection of  
36 data for drug court programs, is amended to read as follows:

1 (a)(1) A drug court program shall collect and provide data on drug  
 2 court applicants, ~~drug court participants, and the entire drug court program~~  
 3 and all participants as required by the Division of Drug Court Programs  
 4 within the Administrative Office of the Courts in accordance with the rules  
 5 promulgated under § 16-98-307.

6 (2) The data shall include:

7 (A) The total number of applicants;

8 (B) The total number of participants;

9 (C) The total number of successful applicants;

10 (D) The total number of successful participants;

11 (E) The reason why each unsuccessful participant did not  
 12 complete the program;

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

15 (G) The total number of participants who were arrested for  
 16 a new criminal offense while in the drug court program;

17 (H) The total number of participants who were convicted of  
 18 a new criminal offense while in the drug court program;

19 (I) The total number of participants who committed a  
 20 violation of one (1) or more conditions of the drug court program and the  
 21 resulting sanction;

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

24 (K) Any other data or information as required by the  
 25 Division of Drug Court Programs within the Administrative Office of the  
 26 Courts in accordance with the rules promulgated under § 16-98-307.

27  
 28 SECTION 112. Arkansas Code Title 16 is amended to add a new chapter to  
 29 read as follows:

30 Chapter 99 – Performance Incentive Funding For Recidivism Reduction

31 Subchapter 1 – Performance Incentive Act of 2011

32 16-99-101. Purpose and Intent.

33 (a) Both state and local agencies that implement criminal justice  
 34 practices resulting in outcomes that reduce commitments to the Department of  
 35 Correction should be rewarded.

36 (b) If a state agency, county, or judicial district has implemented

1 proven risk-reduction strategies that reduce the number of offenders  
2 returning to the Department of Correction with no resultant increase in the  
3 crime rate then, in order to reward the state agency, county, or judicial  
4 district and as an incentive to encourage similar practices elsewhere, the  
5 state agency, county, or judicial district should receive a monetary reward  
6 to continue those practices.

7 (c) The award would represent a portion of the monetary savings from  
8 the costs that would have been incurred had the state agency, county, or  
9 judicial district not reduced its impact on the Department of Correction.

10 (d) The goal of this chapter is to align state and local fiscal  
11 incentives by rewarding the Department of Community Correction, county  
12 governments, and judicial districts for each entity's role in reducing its  
13 impact on the Department of Correction.

14  
15 16-99-102. Program authorized – Administration.

16 (a) Costs averted due to a reduction in commitments to the Department  
17 of Correction or a reduction in the period of time served in the department,  
18 to the extent possible, shall be reinvested into those state agencies,  
19 counties, or judicial districts as an incentive to further the crime and  
20 recidivism reduction strategies being employed.

21 (b) The Department of Community Correction shall be the recipient of  
22 incentive funds upon meeting the requirements set out in this subchapter.

23 (c)(1) Counties, multicounty partnerships, and judicial districts  
24 shall be eligible to apply for participation in the program set out in this  
25 subchapter on the reduction in the Department of Correction's population.

26 (2) Participation in the program will be determined through a  
27 competitive grant process.

28 (d) The Board of Corrections shall have the authority to manage the  
29 program and administer the grant funds to appropriate applicants and the  
30 Department of Community Correction.

31  
32 16-99-103. Application.

33 (a)(1) The Department of Community Correction shall receive additional  
34 funding for a reduction in the number of probation revocations that result  
35 from a technical violation or a new crime.

36 (2) The baseline for comparing probation revocation data shall

1 be the revocation baseline established revocation data ending in the state's  
2 2011 fiscal year.

3 (3) In order to qualify for the additional monetary incentives  
4 under this subchapter, the felony conviction rate for probationers must  
5 remain stable or decrease from the previous year.

6 (4) The Department of Community Correction shall promulgate  
7 rules and regulations for the distribution and use of incentive funds that it  
8 receives, requiring that:

9 (A) No less than one-third (1/3) of the funds received  
10 each year are distributed to the area centers responsible for the revocation  
11 reductions while maintaining or improving public safety; and

12 (B) All of the funds received by the Department of  
13 Community Correction are invested in programs and practices designed to  
14 reduce recidivism.

15 (b)(1) A competitive grant process will distribute five (5) individual  
16 grants to counties, multicounty partnerships, or judicial districts that meet  
17 criteria established to improve public safety and reduce commitments to the  
18 Department of Correction.

19 (2) The Board of Corrections shall have the authority to:

20 (A) Manage the competitive grant process;

21 (B) Determine appropriate criteria;

22 (C) Award grants; and

23 (D) Collect and evaluate the data from all grantee sites.

24 (3) Applications can come from:

25 (A) Individual counties;

26 (B) Multicounty partnerships; or

27 (C) Judicial districts.

28 (4) Four (4) of the five (5) grants shall be awarded to the  
29 counties, multicounty partnerships, or judicial districts with the largest  
30 number of annual Department of Correction commitments that meet the program  
31 criteria and submit acceptable applications.

32 (5) One (1) grant shall be awarded to a county, multicounty  
33 partnership, or judicial district representing a rural region of the state,  
34 notwithstanding the number of Department of Correction commitments from the  
35 applicant so long as the program criteria are met and the application is  
36 acceptable.

1           (6) Each grant recipient shall receive additional funds equal to  
2 half of the averted costs for reducing the net impact of its sentences on  
3 Department of Correction commitments and length of sentences.

4           (7) The baseline for comparing commitments to the Department of  
5 Correction and length-of-stay data shall be the number of department  
6 commitments and the anticipated period of imprisonment from each grantee  
7 site, whether that be county, multicounty partnership, or judicial district,  
8 established by department commitment and length-of-stay data ending the  
9 state's 2011 fiscal year.

10           (8) In order to qualify for the additional monetary incentives  
11 under this subchapter, the felony conviction rate must remain stable or  
12 decrease from the previous year.

13           (9) The Board of Corrections shall promulgate rules and  
14 regulations for the distribution and use of incentive funds to successful  
15 applicants that require that the funds are used to establish or improve the  
16 criminal justice and law enforcement activities in those locations that  
17 maintain public safety while reducing the cost of corrections by sending  
18 fewer offenders or for shorter periods to the Department of Correction.

19  
20           16-99-104. Implementation.

21           The Board of Corrections shall:

22           (1) Establish rules and regulations for counties, multicounty  
23 partnerships, or judicial districts to apply for funds under this subchapter;

24           (2) Calculate and determine the baseline for Department of  
25 Community Correction probation reductions and for Department of Correction  
26 commitments for evaluation purposes;

27           (3) Calculate the averted costs to determine the amount to  
28 redirect to successful applicants who qualify for funds awarded under the  
29 program;

30           (4) Ensure that half of the funds awarded to grantees are  
31 invested in:

32                   (A) Community-based treatment programs;

33                   (B) Drug courts;

34                   (C) Mental health courts;

35                   (D) Reentry courts; or

36                   (E) Victim services; and

1           (5) Ensure that the remainder of the funds awarded to grantees  
2 is invested in criminal justice and law enforcement activities that improve  
3 public safety.

4  
5           16-99-105. Reporting and data collection.

6           (a)(1) The Department of Community Correction shall provide data and  
7 information as requested by the Board of Correction.

8           (2) That data and information shall include without limitation:

9                   (A) The total number of probationers from each of the  
10 Department of Community Correction's area centers for the current year and  
11 previous years, as available;

12                   (B) The total number of probation revocations, including  
13 revocations that result from violations and from new crimes for the current  
14 year and previous years, as available;

15                   (C) The total number of new felony convictions and the  
16 rate of new felony convictions from each of the department's area centers for  
17 the current year and previous years, as available;

18                   (D) The amount of grant funds distributed to each area  
19 center; and

20                   (E)(i) The evidence-based programs established or enhanced  
21 by the Department of Community Correction as part of its effort to reduce  
22 revocations and improve public safety; and

23                           (ii) Any subsequent evidence-based programs that  
24 contribute to the outcomes of the program under this subchapter.

25           (b) Each grantee shall provide data and information as requested by  
26 the Board of Correction, including without limitation:

27                   (1) The list of counties, if in a multicounty partnership,  
28 participating;

29                   (2) The total bed impact of above-guideline sentences to the  
30 Department of Correction for the current year and all previous years, as  
31 available;

32                   (3) The total financial burden on the Department of Correction  
33 for current year and all previous years, as available;

34                   (4) The total number of new felony convictions and the rate of  
35 new felony convictions for the current year and previous years, as available;

36                   (5) The amount of grant funds distributed under this chapter to

1 each county, multicounty partnership, or judicial district; and

2 (6) The evidence-based programs established or enhanced as part  
 3 of each applicant's successful grant proposal and any subsequent evidence-  
 4 based programs that contribute to the outcomes of the program under this  
 5 chapter.

6 (c) The board shall report all data, findings, and recommendations  
 7 annually for improvement to the:

8 (1) Governor;

9 (2) Chief Justice of the Supreme Court;

10 (3) Director of the Administrative Office of the Courts;

11 (4) Speaker of the House;

12 (5) President of the Senate;

13 (6) Chair of the House Judiciary Committee; and

14 (7) Chair of the Senate Judiciary Committee.

15 (d) The board shall conduct a study and make recommendations, as  
 16 needed, to those persons or entities listed in subsection (b) of this  
 17 section, three (3) years after the implementation of the program established  
 18 under this chapter and every third year thereafter to determine whether to  
 19 change the baseline year that determines revocation reduction benchmarks.

20  
 21 SECTION 113. Arkansas Code § 16-118-108(a), regarding those items  
 22 defined as drug paraphernalia, is amended to read as follows:

23 (a) As used in this subchapter, "drug paraphernalia" means those items  
 24 as defined by §§ 5-64-101, 5-64-403(a)(4), 5-64-433, and 5-64-505.

25  
 26 SECTION 114. Arkansas Code § 17-17-312(f)(28), regarding criminal  
 27 background checks for auctioneers, is amended to read as follows:

28 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
 29 64-101 – ~~5-64-608~~ 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-  
 30 64-419 – 5-64-432;

31  
 32 SECTION 115. Arkansas Code § 17-27-313(e)(28), regarding criminal  
 33 background checks for counselors, is amended to read as follows:

34 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
 35 64-101 – ~~5-64-608~~ 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-  
 36 64-419 – 5-64-432;



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2 SECTION 116. Arkansas Code § 17-87-312(e)(28), regarding criminal  
3 background checks for nurses, is amended to read as follows:

4 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
5 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
6 5-64-432;  
7

8 SECTION 117. Arkansas Code § 17-97-312(f)(28), regarding criminal  
9 background checks for psychologists and psychological examiners, is amended  
10 to read as follows:

11 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
12 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
13 5-64-432;  
14

15 SECTION 118. Arkansas Code § 17-103-307(f)(28), regarding criminal  
16 background checks for social workers, is amended to read as follows:

17 (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
18 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
19 5-64-432;  
20

21 SECTION 119. Arkansas Code Title 19, Chapter 5, Subchapter 11 is  
22 amended to add a new section to read as follows:

23 19-5-1139. Best Practices Fund.

24 (a) There is created on the books of the Treasurer of State, the  
25 Auditor of State, and the Chief Fiscal Officer of the State a trust fund to  
26 be known as the “Best Practices Fund”.

27 (b) The Best Practices Fund may consist of the proceeds from the  
28 payment of parole or probation supervision fees under § 16-93-104(a).

29 (c)(1) Expenditures from the Best Practices Fund shall be used to  
30 establish and maintain programs and services that implement practices that  
31 are proven to reduce the risk of having repeat offenders or recidivism,  
32 including programs that address treatment needs of offenders.

33 (2) Programs funded by the Best Practices Fund, whether provided  
34 by the Department of Correction, another state agency, or contracted with a  
35 private vendor, shall meet criteria promulgated in Department of Correction  
36 rules that establish evidence-based practices.

1           (3)(A) The funds deposited into the Best Practices Fund  
2 supplement and do not replace the state and local resources that are  
3 currently directed toward offender rehabilitation programs through the  
4 Department of Community Correction, the Department of Human Services, or any  
5 other state agency.

6           (B) Any expenditure from the General Fund or the Community  
7 Correction Revolving Fund shall not be reduced based on the availability of  
8 funds in the Best Practices Fund.

9  
10           SECTION 120. Arkansas Code § 20-13-1106(b)(28), regarding criminal  
11 background checks for emergency medical personnel, is amended to read as  
12 follows:

13           (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
14 64-101 – 5-64-608, as prohibited in:

15           (A) The former § 5-64-401; and

16           (B) Sections 5-64-419 – 5-64-432;

17  
18           SECTION 121. Arkansas Code § 21-15-102(f)(28), regarding criminal  
19 background checks for public officers and employees who have direct contact  
20 with children and the mentally ill, is amended to read as follows:

21           (28) Felony violation of the Uniform Controlled Substances Act, §§ 5-  
22 64-101 – 5-64-510, as prohibited in the former § 5-64-401 and §§ 5-64-419 –  
23 5-64-432;

24  
25           SECTION 122. Arkansas Code § 21-15-103(g)(28), regarding criminal  
26 background checks for public officers and employees, is amended to read as  
27 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 5-64-432;

31  
32           SECTION 123. The introductory language of Arkansas Code § 27-23-  
33 112(b)(7), regarding disqualification and cancellation for commercial  
34 driver's licenses, is amended to read as follows:

35           (7) If a driver operates a motor vehicle and is convicted of using the  
36 vehicle in the commission of a felony involving delivering, manufacturing,

1 ~~distributing, or dispensing or trafficking~~ a controlled substance in  
2 violation of ~~§§ 5-64-419 – 5-64-432~~ or the former § 5-64-401, the driver  
3 shall be disqualified as follows:  
4

5 SECTION 124. Arkansas Code § 27-23-128 is amended to read as follows:  
6 27-23-128. Deferment of sentence – Restrictions.

7 No circuit or district court judge may utilize ~~§ 5-4-311~~, § 5-4-321, §  
8 16-90-115, ~~or §§ 16-93-301 – 16-93-303~~, ~~§ 16-93-314~~, or § 27-50-701 or any  
9 other program to defer imposition of sentence in instances in which the  
10 defendant holds a commercial driver license and is charged with violating any  
11 state or local traffic law other than a parking violation.  
12

13 SECTION 125. Arkansas Code § 16-93-211(b)(2), regarding transitional  
14 housing for inmates, is amended to read as follows:

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

18 (A) The provision of all applicable notices under ~~§ 16-93-206~~ §  
19 16-93-711; and

20 (B) A hearing conducted by the board.  
21

22 SECTION 126. Arkansas Code § 12-29-201(b), regarding meritorious good  
23 time, is amended to read as follows:

24 (b) An inmate transferred or paroled to the supervision of the  
25 Department of Community Correction under ~~§ 16-93-206~~ § 16-93-711 may receive  
26 meritorious good time reducing his or her time of transfer or parole  
27 supervision up to thirty (30) days for each month he or she is under the  
28 supervision of the Department of Community Correction.  
29

30 SECTION 127. Arkansas Code § 12-12-1202 is amended to read as follows:  
31 12-12-1202. Information provided.

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

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

36 (2) Section 16-21-106, pertaining to assistance to victims and

1 witnesses of crimes;

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

3 (4) Section ~~16-93-206~~ 16-93-711, pertaining to transfer  
4 hearings;

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

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

7 (b) The computerized victim notification system established under §  
8 12-12-1201 shall also include information about an inmate's custody status in  
9 regard to furloughs, work release, and community correction programs.

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