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2 95th General Assembly
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4

A Bill

SENATE BILL 485

5 By: Senators C. Tucker, Gilmore
6 By: Representatives Gazaway, Dalby
7

For An Act To Be Entitled

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

15 TO REDUCE RECIDIVISM; AND TO AMEND THE
16 LAW CONCERNING THE SUSPENDED IMPOSITION
17 OF A SENTENCE, PROBATION, PAROLE, AND
18 POST-RELEASE SUPERVISION.
19
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

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

26 (8) "Criminogenic" means factors, identified through current
27 research, that are known to contribute to criminal behavior.
28

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

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

35 (2) Conditions attached by the court shall be:

36 (A) The least restrictive conditions necessary for



1 rehabilitation and public safety; and

2 (B) Narrowly tailored to the criminogenic risks and needs
3 of the defendant.

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

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

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

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

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

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

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

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

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

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

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

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

3 (8) Satisfy any other condition reasonably related to the
4 rehabilitation of the defendant and not unduly restrictive of his or her
5 liberty or incompatible with his or her freedom of conscience.
6

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

9 If a court suspends imposition of sentence on a defendant or places him
10 or her on probation, the period of suspension or probation shall be for a
11 definite period of time not to exceed the maximum jail or prison sentence
12 allowable for the offense charged taking into account the recommended periods
13 of suspension or probation as promulgated by the Arkansas Sentencing
14 Commission.
15

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

19 (18) The Department of Corrections shall establish the Evidence-
20 based Practices and Quality Assurance Unit that conducts programs of
21 research, evaluation, statistics, audit, and planning, including studies and
22 evaluation of the performance of various functions and activities of the
23 department and studies affecting the treatment of offenders and information
24 about other programs; and
25

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

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

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

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

1 of the state;

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

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

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

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

23 (A) Accurately complete risk and needs assessments;

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

26 (C) Engage and motivate a person to participate in the
27 rehabilitation-oriented case plan and change his or her behaviors.

28

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

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

1 administratively transferred.

2

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

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

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

15

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

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

23

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

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

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

1 restitution, the defendant has been sentenced to pay.

2 (ii) A defendant who was not eligible to be
3 represented by a public defender may petition the court for the relief
4 provided under subdivision (c)(2)(B)(i) of this section.
5

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

9 (d) Notwithstanding subsections (a) through (c) of this section and
10 subject to funding by the General Assembly, the Administrative Office of the
11 Courts shall develop a new pilot program to expand the number of presentence
12 officers dedicated to preparing presentence reports with a validated risk and
13 needs assessment component.
14

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

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

21 (B) The commission shall also set:

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

25 (ii) Guidelines for presumptive periods of
26 suspension or probation;
27

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

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

1
2 SECTION 14. Arkansas Code § 16-90-1304 is amended to read as follows:
3 16-90-1304. Application.

4 (a) ~~When a person has~~ A person shall be eligible for consideration of
5 discharge of his or her sentence under this subchapter when he or she has:

6 (1) Reduced his or her original risk of recidivism as determined
7 by his or her risk score on the validated risk and needs assessment conducted
8 by the Department of Corrections; or

9 (2) ~~accumulated~~ Accumulated enough days, through a combination
10 of served and earned time equal to the total number of days of the sentence
11 imposed by the sentencing court, ~~he or she shall be eligible for~~
12 ~~consideration of discharge of his or her sentence under this subchapter.~~

13 (b)(1) ~~No less~~ If the Division of Community Correction proposes to
14 discharge a person's sentence under this subchapter, no fewer than forty-five
15 (45) days before the discharge date, the ~~Division of Community Correction~~
16 division shall submit notice to:

17 (A) The prosecuting attorney; and

18 (B) The Post-Prison Transfer Board.

19 (2) Within thirty (30) days of receipt of the earned discharge
20 notice under subdivision (b)(1) of this section, the prosecuting attorney or
21 the board may ~~submit to the division in writing any reasonable~~ file a
22 petition for review in the sentencing court based on a public safety-related
23 objection to early discharge under this subchapter warranting the forfeiture
24 of earned-discharge credit.

25 (3) ~~If an objection~~ a petition for review under subdivision
26 (b)(2) of this section ~~is lodged~~ is filed, the division shall immediately
27 suspend the discharge of the sentence.

28 (4) ~~The parolee or probationer may file a petition for review in~~
29 ~~the sentencing court.~~

30 (5)(4) A review shall be conducted in the sentencing court
31 within fourteen (14) days of the filing of the petition.

32 (6)(5)(A) The sentencing court shall consider the public safety-
33 related objections against the person based ~~solely~~ on the information
34 contained in the petition.

35 (B) The sentencing court shall determine, based on a
36 preponderance of the evidence, whether the person should not be discharged

1 from the sentence because, if the information contained in the petition had
2 been known to the division, the division would have ordered the forfeiture of
3 any of the discharge credit earned to that point or if insufficient evidence
4 exists that would warrant the forfeiture of discharge credit.

5 (C) If the sentencing court finds sufficient evidence
6 warranting a forfeiture of discharge credits, the division shall make the
7 necessary forfeiture of earned discharge credit appropriate for the type of
8 misconduct asserted in the objection.

9 (D)(i) If the sentencing court does not find sufficient
10 evidence exists that warrants forfeiture of discharge credits, the division
11 shall discharge the person immediately if the date upon which the completion
12 of the sentence occurred has passed.

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

16 (c) If the prosecuting attorney or the board does not file an
17 objection, ~~upon the filing of a petition in the sentencing court by the~~
18 ~~parolee or probationer stating that no objections have been filed,~~ the court
19 ~~may~~ shall discharge the person immediately if the date upon which the
20 completion of the sentence has passed.

21 (d) An appeal may not be taken by either party from the sentencing
22 court's findings or the division's decision for early discharge.

23
24 SECTION 15. Arkansas Code § 16-93-101, concerning definitions with
25 respect to probation and parole, is amended to add additional subdivisions to
26 read as follows:

27 (16) "Criminogenic" means factors, identified through current
28 criminological research, that are known to contribute to criminal behavior;
29 and

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

33
34 SECTION 16. Arkansas Code § 16-93-306(c), concerning probation
35 supervision generally, is amended to read as follows:

36 (c)(1) The Division of Community Correction shall allocate resources,

1 including the assignment of probation officers, to focus on moderate-risk and
2 high-risk offenders as determined by the actuarial assessment provided in
3 subdivision (b)(6) of this section.

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

8 (3) The Department of Corrections shall:

9 (A) Develop a process for annually evaluating each
10 provider under subdivision (c)(2) of this section;

11 (B) Establish a clear policy disqualifying a noncompliant
12 provider from receiving public funds until the provider demonstrates the
13 ability to comply; and

14 (C) Provide an annual report to the Legislative Council
15 regarding the results of annual evaluations and each noncompliant provider.

16 (4) The Division of Community Correction shall develop a system
17 for evaluating and promoting a probation officer and a community supervision
18 officer based on dimensions that include without limitation the:

19 (A) Probation officer's or community supervision officer's
20 ability to engage and motivate a probationer to participate in a supervision
21 plan;

22 (B) Probation officer's or community supervision officer's
23 competency in the use of risk and needs assessment tools; and

24 (C) Quality of the probation officer's or community
25 service officer's case plans.

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

29
30 SECTION 17. Arkansas Code § 16-93-306(d)(2), concerning
31 administrative sanctions while on probation supervision, is amended to read
32 as follows:

33 (2)(A) The Division of Community Correction shall develop an
34 intermediate sanctions procedure and grid to guide a probation officer in
35 determining the appropriate response to prosocial behavior or a violation of
36 conditions of supervision.

1 (B) ~~Intermediate sanctions~~ Sanctions administered by the
 2 Division of Community Correction are required to conform to the incentives
 3 and sanctioning grid.

4 (C) The ~~intermediate~~ incentives and sanctioning grid shall
 5 include:

6 (i) An assignment of point values, graduated by risk
 7 levels, to commonly occurring violations of terms of probation or criminal
 8 behavior;

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

12 (a) Education;

13 (b) Workforce development;

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

15 (d) Behavioral health programming; and

16 (e) Any prosocial activity;

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

19 (iv) Guidance on which intermediate sanctions should
 20 be applied at which point thresholds;

21 (v) Rewards that are attainable and meaningful at
 22 each risk level to motivate individuals throughout stages of supervision,
 23 including without limitation achieving individualized goals, milestones, and
 24 accomplishments; and

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

27
 28 SECTION 18. Arkansas Code § 16-93-712(a), concerning parole
 29 supervision, is amended to read as follows:

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

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

36 (B) Decisions shall target the parolee's criminal risk

1 factors with appropriate supervision and treatment designed to reduce the
2 likelihood of reoffense.

3 (C) Conditions of supervision shall be the least
4 restrictive conditions necessary for rehabilitation and public safety and
5 narrowly tailored to the criminogenic risks and needs of the individual
6 parolee.

7
8 SECTION 19. Arkansas Code § 16-93-712(c), concerning the services
9 provided to people under parole supervision, is amended to add an additional
10 subdivision to read as follows:

11 (3) The Department of Corrections shall:

12 (A) Develop a process for annually evaluating each
13 provider under subdivision (c)(2) of this section;

14 (B) Establish a clear policy disqualifying a noncompliant
15 provider from receiving public funds until the provider demonstrates the
16 ability to comply; and

17 (C) Provide an annual report to the Legislative Council
18 regarding the results of annual evaluations and each noncompliant provider.

19
20 SECTION 20. Arkansas Code § 16-93-712(d)(2), concerning administrative
21 sanctions while on parole, is amended to read as follows:

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

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

31 (B) ~~Intermediate~~ Incentives and sanctions administered by
32 the Division of Community Correction are required to conform to the
33 incentives and sanctioning grid.

34 (C) The ~~intermediate~~ incentives and sanctioning grid shall
35 include:

36 (i) An assignment of point values to commonly

1 occurring violations of terms of parole or criminal behavior;

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

5 (a) Education;

6 (b) Workforce development;

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

8 (d) Behavioral health programming; and

9 (e) Any prosocial accomplishment;

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

12 (iv) Guidance on which intermediate sanctions should
13 be applied at which point thresholds;

14 (v) Rewards that are attainable and meaningful at
15 each risk level to motivate individuals throughout the stages of supervision,
16 including achieving individualized goals, milestones, and accomplishments;
17 and

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

20
21 SECTION 21. Arkansas Code § 16-93-1202(6), concerning the definition
22 of "eligibility" or "eligible offender" with respect to community correction,
23 is amended to read as follows:

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

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

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

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

36 (i) Was more than five (5) years before the instant

1 offense; and

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

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

6 (C) Conditions of post-release supervision shall be:

7 (i) The least restrictive conditions necessary for
8 rehabilitation and public safety; and

9 (ii) Narrowly tailored to the criminogenic risks and
10 needs of the offender.

11
12 SECTION 23. Arkansas Code § 16-93-1906(c), concerning the services
13 provided people who are under post-release supervision, is amended to add an
14 additional subdivision to read as follows:

15 (3) The Department of Corrections shall:

16 (A) Develop a process for annually evaluating each
17 provider under subdivision (c)(2) of this section;

18 (B) Establish a clear policy disqualifying a noncompliant
19 provider from receiving public funds until the provider demonstrates the
20 ability to comply; and

21 (C) Provide an annual report to the Legislative Council
22 regarding the results of annual evaluations and each noncompliant provider.

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