

Stricken language would be deleted from and underlined language would be added to present law.  
Act 1125 of the Regular Session

State of Arkansas  
89th General Assembly  
Regular Session, 2013

As Engrossed: S2/26/13  
**A Bill**

SENATE BILL 178

By: Senator D. Johnson  
By: Representatives Vines, Williams

### For An Act To Be Entitled

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

### Subtitle

TO MAKE TECHNICAL CORRECTIONS TO TITLE 5,  
CONCERNING CRIMINAL LAW, OF THE ARKANSAS  
CODE.

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

SECTION 1. Arkansas Code § 5-2-316(a)(1) is amended to read as follows to clarify its application:

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

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

5-4-802. Rules.

The Board of Corrections shall promulgate necessary rules to be



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(B) Class A misdemeanor.~~

(1) Class A misdemeanor; or

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

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

~~Class D felony.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Have the execution of the sentence deferred;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*/s/D. Johnson*

**APPROVED: 04/11/2013**