State of Arkansas *As Engrossed: S2/13/17 S2/16/17 S2/22/17*
91st General Assembly **A Bill**
Regular Session, 2017 SENATE BILL 136

By: Senator J. Hutchinson
By: Representatives Tucker, Shepherd

For An Act To Be Entitled

AN ACT TO BE KNOWN AS THE CRIMINAL JUSTICE EFFICIENCY AND SAFETY ACT OF 2017; TO INCREASE THE EFFECTIVENESS OF MONITORING PROBATIONERS AND PAROLEES BY THE DEPARTMENT OF COMMUNITY CORRECTION; TO PROMOTE EFFICIENT STAFFING BY THE DEPARTMENT OF COMMUNITY CORRECTION; TO ESTABLISH MORE EFFICIENT AND EFFECTIVE PUNISHMENT FOR PAROLEES AND PROBATIONERS WHO VIOLATE *THE TERMS AND CONDITIONS OF PAROLE OR PROBATION; TO PROVIDE FOR* THE ELECTRONIC COLLECTION OF DATA TO BE USED BY LAW ENFORCEMENT AGENCIES; CONCERNING THE METHODS AND PROCEDURES USED BY LAW ENFORCEMENT, JAIL PERSONNEL, AND MENTAL HEALTH SERVICE PROVIDERS AND PROFESSIONALS USED IN ENGAGING AN INDIVIDUAL WITH A MENTAL HEALTH IMPAIRMENT; TO PROMOTE ALL LAW ENFORCEMENT OFFICERS TO COMPLETE CONTINUED EDUCATION AND TRAINING IN MENTAL HEALTH CRISIS INTERVENTION AND CRISIS INTERVENTION PROTOCOL; TO CREATE THE BEHAVIORAL HEALTH CRISIS INTERVENTION PROTOCOL ACT OF 2017; TO REPEAL SECTIONS OF THE ARKANSAS CODE SUPERSEDED BY THE COMMITMENT AND TREATMENT PROCESS UNDER § 20-47-201 ET SEQ.; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE CRIMINAL JUSTICE EFFICIENCY AND SAFETY ACT OF 2017.

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

SECTION 1. Arkansas Code § 5-4-303, concerning conditions of suspension or probation, is amended to add a new subsection to read as follows:

(h) In addition to other available sanctions, a person sentenced prior to the effective date of this act that is on probation under this section has the option to be sanctioned administratively under § 16-93-306(d) as it existed at the time of his or her sentence or as § 16-93-306 exists as of the effective date of this act.

SECTION 2. Arkansas Code § 5-4-312 is amended to read as follows:

5-4-312. Presentence investigation — Placement in a community correction program.

(a)(1) A court may require that either a presentence investigation be conducted by either the probation officer or presentence investigation officer assigned to the court or that the defense counsel of a defendant, the prosecuting attorney, a probation officer, and other persons whom the court believes have information relevant to the sentencing of the defendant submit to the court the information in writing prior to sentencing.

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

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

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

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

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

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

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

(iii) If the defendant is committed to the Department of Correction under subdivision (b)(1)(D)(ii) of this section, the court shall specify if the commitment is for judicial transfer of the ~~offender~~ defendant to the Department of Community Correction or is a commitment to the Department of Correction; ~~or~~

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

(i) That the sentence imposed provides that the defendant shall not serve more than ~~two (2)~~ three (3) years of confinement, with credit for meritorious good time, with initial placement in a Department of Community Correction facility; and

(ii) That the ~~initial~~ preliminary placement in the Department of Community Correction facility is conditioned upon the Department of Community Correction's final determination of the defendant's initial and continuing eligibility for Department of Community Correction placement and the defendant's compliance with all applicable rules established by the ~~board~~ Board of Corrections for community correction programs.

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

(3)(A) Sentence the defendant to the Department of Correction,

granting the Department of Correction the ability to administratively transfer the defendant to the Department of Community Correction if the Department of Correction determines that the sentence imposed meets the eligibility requirements for placement in a community correction program under this subchapter and § 16-93-1201 et seq.

(B) Administrative transfer to the Department of Community Correction under subdivision (b)(3)(A) of this section is conditioned upon bed space availability and upon the Department of Community Correction's final determination of the defendant's initial and continuing eligibility for Department of Community Correction placement.

(C) A determination of ineligibility under subdivision (b)(3)(A) of this section by the Department of Community Correction shall result in the immediate return of the defendant to the Department of Correction.

(D) A decision to release a defendant administratively transferred to the Department of Community Correction from the Department of Correction under subdivision (b)(3)(A) of this section is vested solely with the Parole Board.

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

(d)(1) If after receipt of an order directing a defendant to a community correction center, the Department of Community Correction determines that the defendant is not eligible for placement in a community correction program under § 16-93-1201 et seq., the Department of Community Correction shall not admit the defendant but shall immediately notify the prosecuting attorney in writing.

(2) After receipt of the notice required under subdivision (d)(1) of this section, the prosecuting attorney shall notify the court of the defendant's ineligibility for placement in a community correction center, and the court shall resentence the defendant accordingly.

SECTION 3. Arkansas Code Title 6, Chapter 64, Subchapter 12, is repealed due to duplicate codification in Title 12.

~~*6-64-1201. Definitions.*~~

~~*As used in this subchapter:*~~

~~*(1) "Community mental health centers" means those private nonprofit organizations certified by the Division of Behavioral Health Services under § 20-46-301 et seq., as community mental health centers and contracted to perform designated public mental health services in the respective catchment areas of the state;*~~

~~*(2) "Crisis Intervention Team" means a community-based collaborative effort between law enforcement officers and jail personnel and mental health professionals to help law enforcement officers and jail personnel handle incidents involving persons with mental illnesses;*~~

~~*(3) "Inmate with mental illness" means a jail inmate who, after being assessed by a person qualified by licensure to conduct an assessment, meets the criteria for serious mental illness or is in danger of harm to himself or herself or to others;*~~

~~*(4) "Jail inmate" means a natural person who is in the custody of law enforcement authorities within the confines of a county jail; and*~~

~~*(5) "Person with mental illness arrested by a law enforcement officer" means a person who appears to be a danger to himself or herself or to others or to need mental health evaluation for treatment.*~~

~~*6-64-1202. Law Enforcement Training Committee — Creation — Duties.*~~

~~*(a) The Law Enforcement Training Committee is created to:*~~

~~*(1) Identify mental health training needs for law enforcement officers; and*~~

~~*(2) Develop a mental health training curriculum for law enforcement officers and jail personnel to be delivered statewide.*~~

~~*(b)(1) The committee shall be led by the Criminal Justice Institute.*~~

~~*(2) The committee shall include representatives of:*~~

~~*(A) The Arkansas Law Enforcement Training Academy;*~~

~~*(B) The Research and Training Institute of the Division of Behavioral Health Services;*~~

~~*(C) The Department of Community Correction;*~~

~~*(D) The Mental Health Council of Arkansas;*~~

~~*(E) The Administrative Office of the Courts;*~~

~~*(F) Local, state, and county law enforcement officers; and*~~

~~*(G) Mental health practitioners.*~~

~~*(c) The training and delivery strategies may consist of:*~~

~~*(1) Basic level training for law enforcement officers and jail personnel to be included in the entry-level training program curricula;*~~

~~*(2) Advanced level training for law enforcement officers and jail personnel that is designed to enhance the effectiveness of the response of law enforcement officers and jail personnel to persons with mental illnesses;*~~

~~*(3) Training, such as Crisis Intervention Team training, that includes methods for establishing a collaborative effort between law enforcement personnel and the community to provide appropriate services to those persons with mental illnesses who come into contact with the law enforcement system;*~~

~~*(4) Establishment of regional training teams, consisting of mental health and law enforcement officers; and*~~

~~*(5) A train-the-trainer model so that mental health training can be provided in each county jail at frequent and regular intervals as needed by a local person who has received formal training through curricula developed under this subchapter.*~~

~~*(d) Crisis Intervention Teams shall be:*~~

~~*(1) Supported by state funding; and*~~

~~*(2) Provided initial assistance in organization.*~~

~~*(e)(1) Local police departments and sheriff departments may apply to the Criminal Justice Institute for crisis intervention training under this subchapter.*~~

~~*(2) The Crisis Intervention Team training curriculum development and delivery under subdivision (e)(3) of this section shall be supported by state funding.*~~

~~*(f)(1) A graduate of the Crisis Intervention Team training shall provide the local department in which he or she serves with information and materials obtained at the crisis intervention training.*~~

~~*(2)(A) Each department that sends law enforcement officers to receive Crisis Intervention Team training shall convene a meeting at least annually to review and improve the program in the department.*~~

~~*(B) The meeting shall include without limitation representatives of:*~~

~~*(i) Local behavioral health service providers;*~~

~~*(ii) Community mental health centers within the*~~

~~*jurisdiction of the departments;*~~

~~*(iii) Consumers;*~~

~~*(iv) Courts;*~~

~~*(v) The National Alliance on Mental Illness; and*~~

~~*(vi) Local institutions of higher education,*~~ *including without limitation, the University of Arkansas for Medical Sciences and the Regional Centers of the University of Arkansas for Medical Sciences.*

~~*(g) The goal of the Crisis Intervention Team training program is to establish a collaborative effort between law enforcement officers and jail personnel and the community to provide appropriate services to persons with mental illnesses who come into contact with the law enforcement system.*~~

SECTION 4. The title of the subchapter for Arkansas Code Title 10, Chapter 3, Subchapter 28, is amended to read as follows:

Subchapter 28 — Legislative ~~*Criminal Justice Oversight Task Force*~~ *Task Forces Concerning Criminal Justice*

SECTION 5. Arkansas Code Title 10, Chapter 3, Subchapter 28, is amended to add an additional section to read as follows:

10-3-2802. Interagency Task Force for the Implementation of Criminal Justice Prevention Initiatives.

(a)(1)(A) There is created the Interagency Task Force for the Implementation of Criminal Justice Prevention Initiatives.

(B) The purpose of the task force is to coordinate the implementation of initiatives and strategies designed to promote efficiency and safety in the criminal justice system as well as promote justice reinvestment goals.

(2) The Governor's office shall provide staff support for the task force.

(b) The task force shall be composed of the following seventeen (17) members, as follows:

(1) Seven (7) members shall be appointed by the Governor:

(A) One (1) member who is a circuit court judge;

(B) One (1) member who is a district court judge;

(C) One (1) member who is a county sheriff;

(D) One (1) member who is a county judge;

(E) One (1) member who is appointed by and who represents the Governor; and

(F) Two (2) members who are prosecuting attorneys;

(2) Two (2) members of the Senate appointed by the President Pro Tempore of the Senate;

(3) Two (2) members of the House of Representatives appointed by the Speaker of the House of Representatives;

(4) One (1) member appointed by the Director of the Department of Human Services who represents the Division of Behavioral Health Services of the Department of Human Services;

(5) The Chair of the Board of Corrections or his or her designee;

(6) The Chair of the Parole Board or his or her designee;

(7) The Director of the Department of Correction or his or her designee;

(8) The Director of the Department of Community Correction or his or her designee; and

(9) The Attorney General or his or her designee.

(c)(1) The task force shall meet on or before the thirtieth day after September 1, 2017, at the call of the member appointed by and who represents the Governor, and organize itself by electing one (1) of its members as Chair of the Interagency Task Force for the Implementation of Criminal Justice Prevention Initiatives and other officers as the task force may consider necessary.

(2) Thereafter, the task force shall meet at least quarterly and at the call of the chair or by a majority of the members.

(3) A quorum of the task force consists of nine (9) members.

(d) The task force has the following powers and duties:

(1) To track the implementation of and evaluate compliance with this act;

(2) To review performance and outcome measure reports submitted semiannually by the Department of Correction, Department of Community Correction, Parole Board, Board of Corrections, Arkansas Sentencing Commission, and Specialty Court Program Advisory Committee under this act and evaluate the impact;

(3) To develop quality assurance reporting on the implementation

of policies and the expenditure of resource investments related to the justice reinvestment policies and reinvestments; and

(4)(A) To prepare and submit an annual report of the performance and outcome measures that are part of this act to the Legislative Council, the Governor, and the Chief Justice of the Supreme Court.

(B) The annual report shall include recommendations for improvements and a summary of savings generated and the impact on public safety resulting from this act.

(e) Members of the task force shall receive no pay for their services, but each member may receive expense reimbursement in accordance with § 25-16-901 et seq.

(f) This section expires on July 1, 2019.

SECTION 6. Arkansas Code Title 12, Chapter 6, is amended to add an additional subchapter to read as follows:

Subchapter 6 — Local Criminal Justice Coordinating Committees

12-6-601. Local criminal justice coordinating committees.

(a) The General Assembly finds that the investment of state or federal funding for the operation of a crisis stabilization unit under the Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et seq., necessitates efficient expenditure of the state or federal funds.

(b) The General Assembly encourages the establishment of local criminal justice coordinating committees composed of local judges, local corrections officials, the prosecuting attorney, law enforcement officials, county officials, medical professionals, and mental health professionals.

(c) A local criminal justice coordinating committee may be created under this section and shall:

(1) Periodically review data and records of local and regional detention facilities collected under § 12-12-219 and data concerning a local crisis intervention team and crisis stabilization unit, when applicable;

(2) Assist in the access and transfer of data described under subdivision (c)(1) of this section; and

(3) Recommend protocols for the efficient and effective use of local criminal justice resources, and a crisis intervention team or crisis stabilization unit, when applicable.

SECTION 7. Arkansas Code Title 12, Chapter 9, Subchapter 1, is amended to add an additional section to read as follows:

12-9-118. Behavioral health crisis intervention training.

(a)(1) In accordance with the certification requirements of the Arkansas Commission on Law Enforcement Standards and Training for law enforcement officers, a law enforcement officer enrolled in a commission-certified basic police training academy shall complete at least sixteen (16) hours of training relating to behavioral health crisis intervention in a law enforcement context.

(2) Practicum training is sufficient for the requirement under subdivision (a)(1) of this section.

(b) Training under subsection (a) of this section shall include without limitation:

(1) The dynamics of relating to an individual:

(A) With a behavioral health impairment as defined in § 20-47-803;

(B) Who has demonstrated a substantial likelihood of committing bodily harm against himself or herself;

(C) Who has demonstrated a substantial likelihood of committing bodily harm against another person; or

(D) Who is under the influence of alcohol or a controlled substance to the extent that the individual's judgment and decision-making process is impaired;

(2) Available mental health service providers and support services;

(3) The voluntary and involuntary commitment process;

(4) Law enforcement interaction with hospitals, mental health professionals, the judiciary, and the mental health services community; and

(5) Practices to promote the safety of law enforcement officers and the public.

(c) The commission shall certify:

(1) Specialized training for qualified law enforcement officers of at least eight (8) hours; and

(2)(A) Crisis intervention team training of at least forty (40) hours taught over five (5) consecutive days.

(B) Crisis intervention team training under subdivision (c)(2)(A) of this section shall emphasize understanding of behavioral impairments and mental illnesses and shall incorporate the development of communication skills, practical experience, and role-playing.

(C) Participants in the crisis intervention under subdivision (c)(2)(A) of this section shall be introduced to mental health professionals, consumers, and family members in both the classroom and through onsite visits.

(d)(1) A local law enforcement agency, including a county sheriff's office, but not a municipal law enforcement agency that employs less than ten (10) full-time law enforcement officers, shall employ at least one (1) law enforcement officer who has completed within eighteen (18) months of the effective date of this act the crisis intervention team training as described under subdivision (c)(2) of this section.

(2) A local law enforcement agency, including a county sheriff's office, is encouraged to:

(A) Have at least twenty percent (20%) of the certified law enforcement officers that it employs complete the crisis intervention team training offered under subdivision (c)(2) of this section;

(B) To develop and implement a model policy addressing law enforcement response to persons affected by a behavioral impairment; and

(C) Establish a clearly defined and sustainable partnership with one (1) or more community mental health organizations.

(e) All training required under this section and the curriculum for the training shall be developed by the commission in collaboration with the Criminal Justice Institute of the University of Arkansas System.

SECTION 8. Arkansas Code § 12-11-110 is repealed as the process of arrest and citation by a law enforcement officer is already addressed under the Arkansas Rules of Criminal Procedure.

~~*12-11-110. Drunken, insane, and disorderly persons.*~~

~~*A law enforcement officer shall arrest a drunken, insane, or disorderly person whom he or she finds at large and not in the care of a competent person.*~~

SECTION 9. Arkansas Code Title 12, Chapter 12, Subchapter 2, is

amended to add an additional section to read as follows:

12-12-219. Records of local and regional detention facilities.

(a)(1) The Arkansas Crime Information Center shall permit and encourage the entry of data by a local or regional detention facility, such as a county jail, into a database maintained by the center and accessible by an entity as determined by the Supervisory Board of the Arkansas Crime Information Center.

(2) Data provided by a regional detention facility shall facilitate analysis of inmate populations in local detention facilities including, but not limited to:

(A) Local or regional detention facility inmate population, including the number of inmates currently housed over the recognized maximum capacity of the local or regional detention facility; and

(B) The types and number of offenses for which the inmates are being housed in the local or regional detention facility.

(b) The types of data entered into a database under this section may include:

(1) Information concerning the inmates admitted to and released from the local or regional detention facility, including without limitation:

(A) The State Identification Number of the inmate;

(B) The offenses the inmates committed or were accused of committing; and

(C) The dates the inmates were both taken into custody and released;

(2)(A) A record of any mental health screening of an inmate administered by a law enforcement agency or healthcare facility.

(B) The results of a mental health screening administered by a law enforcement agency or healthcare facility may be entered into the database as permitted by state or federal law; and

(3) Any other data that that would be of assistance to a law enforcement agency, state agency, legislative committee, academic researcher, or other entity permitted to access the data.

(c) The center shall promulgate rules necessary to implement this section.

SECTION 10. Arkansas Code § 12-27-127 is amended to read as follows:

12-27-127. Transfer to the Department of Community Correction – Transfer of an inmate between departments.

(a) ~~Unless a commitment specifies that the inmate is to be judicially transferred to the Department of Community Correction, the~~ A commitment shall be treated as a commitment to the Department of Correction and subject to regular transfer eligibility unless:

(1) The commitment specifies that the inmate is to be judicially transferred to the Department of Community Correction; or

(2) If the court indicates on the commitment that the Department Correction shall administratively determine the transfer of an inmate, the Department of Correction may administratively transfer a statutorily eligible inmate to the Department of Community Correction in accordance with rules promulgated by the Board of Corrections.

(b)(1) In accordance with rules and procedures promulgated by the Board of Corrections and the orders of the committing court, the Director of the Department of Community Correction shall assign a newly transferred inmate to an appropriate facility, placement, program, or status within the Department of Community Correction.

(2) The director may transfer an inmate from one ~~(1)~~ facility, placement, program, or status to another facility, placement, program, or status consistent with the commitment, applicable law, and in accordance with treatment, training, and security needs.

(3)(A) An inmate may be administratively transferred back to the Department of Correction from the Department of Community Correction by the Parole Board following a hearing in which the inmate is found ineligible for placement in a Department of Community Correction facility as he or she fails to meet the criteria or standards established by law or policy adopted by the Board of Corrections or has been found guilty of a violation of the rules of the facility.

(B) Time served in a community correction facility or under supervision by the Department of Community Correction shall be credited against the sentence contained in the commitment to the Department of Correction.

(c)(1) In accordance with rules and procedures promulgated by the Board of Corrections, or except as otherwise prohibited by subdivision (c)(4) of this section, upon receipt of a referral from the director or his or her

designee, the Parole Board may release from confinement an inmate who has been:

(A) Sentenced and judicially or administratively transferred to the Department of Community Correction;

(B) Incarcerated for a minimum of ~~two hundred seventy (270)~~ one hundred eighty (180) days; and

(C) Determined by the Department of Community Correction to have successfully completed its therapeutic program.

(2)(A) The General Assembly finds that the power granted to the Parole Board under subdivision (c)(1) of this section will:

(i) Aid the therapeutic rehabilitation of the inmates judicially or administratively transferred to the Department of Community Correction; and

(ii) More efficiently use the correctional resources of the State of Arkansas.

(B) The power granted to the Parole Board under subdivision (c)(1) of this section shall be the sole authority required for the accomplishment of the purposes set forth in this subdivision (c)(2), and when the Parole Board exercises its power under this section, it shall not be necessary for the Parole Board to comply with general provisions of other laws dealing with the minimum time constraints as applied to release eligibility.

(3) This subsection does not grant the Parole Board or the Department of Community Correction the authority either to detain an inmate beyond the sentence imposed upon him or her by a transferring court or to shorten that sentence.

(4) An inmate may not be released from confinement under this section if the inmate was sentenced and judicially or administratively transferred to the Department of Community Correction at a time earlier than that which would otherwise be possible if the inmate was sentenced to the Department of Correction, regardless of any program completed by the inmate.

(d)(1) An inmate of the Department of Correction who is to be released on parole may be administratively transferred to the Department of Community Correction when the inmate is within eighteen (18) months of his or her projected release date for the purpose of participating in a reentry program of at least six (6) months in length.

(2) Each inmate administratively transferred under this subsection shall be thoroughly screened and approved for participation by the director or his or her designee.

(3) In accordance with rules promulgated by the Board of Corrections, upon receipt of a referral from the director or his or her designee, the Parole Board may release from incarceration an inmate who has been:

(A) Administratively transferred to the Department of Community Correction; and

(B) Determined by the Department of Community Correction to have successfully completed its reentry program.

(4) An inmate who has been administratively transferred under this subsection shall be administratively transferred back to the Department of Correction if he or she:

(A) Is denied parole; or

(B) Fails to complete or is removed from the reentry program.

SECTION 11. Arkansas Code Title 12, Chapter 27, Subchapter 1, is amended to add an additional section to read as follows:

12-27-148. Department of Community Correction — Sufficient staffing guidelines.

For the purposes of maintaining a sufficiently trained and specialized staff of probation and parole officers, the Department of Community Correction shall establish staffing guidelines using evidence-based practices to develop ratios between the number of high-risk, medium-risk, and low-risk probationers and parolees and the probation officers and parole officers assigned to the high-risk, medium-risk, and low-risk probationers and parolees in order to maximize the effectiveness of the monitoring ability of the probation officers and parole officers.

SECTION 12. Arkansas Code Title 12, Chapter 41, Subchapter 1, is amended to add an additional section to read as follows:

12-41-108. Behavioral health and risk screening tool — Database entry.

A local correctional facility is encouraged to:

(1) Adopt independently, or in collaboration with other local

correctional facilities or nongovernmental law enforcement entities, a screening tool designed to screen inmates or other detainees for a behavioral health impairment, substance abuse issues, and criminogenic risk; and

(2) Utilize the database maintained by the Arkansas Crime Information Center under § 12-12-219 concerning entry of data and information collected from inmates at a local correctional facility.

SECTION 13. Arkansas Code § 16-90-803(a)(2), concerning the voluntary presumptive sentence standards, is amended to read as follows:

(2) The voluntary presumptive sentence for any offender ~~of~~ who committed a felony ~~committed~~ on or after January 1, 1994, may be determined by locating the appropriate cell of the sentencing standards grid.

SECTION 14. Arkansas Code § 16-90-803(b)(3), concerning the voluntary presumptive sentence standards, is amended to read as follows:

(3)(A)(i) The offense of conviction determines the appropriate seriousness level on the vertical axis.

(ii) The offender's criminal history score determines the appropriate location on the horizontal axis.

(B) The voluntary presumptive fixed sentence for a felony conviction is found in the sentencing standards grid cell at the intersection of the column defined by the criminal history score and the row defined by the offense seriousness level.

(C) The statutory minimum or maximum ranges for a particular ~~crime~~ offense shall govern over a voluntary presumptive sentence if the voluntary presumptive sentence should fall below or above ~~such~~ the statutory minimum or maximum ranges.

SECTION 15. Arkansas Code § 16-90-804 is amended to read as follows:

16-90-804. Departures from the ~~standards~~ voluntary presumptive sentencing range.

(a)(1) ~~The trial~~ At a bench trial, a court may ~~deviate~~ depart from the voluntary presumptive ~~sentence without~~ sentence range determined under § 16-90-803 in reliance on one (1) or more aggravating factors by providing a ~~written~~ justification in the record of:

(A) A listing of the charges and sentencing enhancements

against the offender as set out in the first charging instrument as well as any additional charges or sentence enhancements subsequently added in the case, if any; and

(B) A thorough recitation of the facts underlying the departure from the voluntary presumptive sentence range under § 16-90-803.

(2)(A) The justification regarding an aggravating factor shall be entered into the sentencing order.

(B) The sentencing order shall also reflect whether the sentence is the result of an original charge or whether an original charge was nolle prosequi.

(b)(1)(A) When sentencing is done by the ~~judge following the entry of a plea of guilty or nolo contendere or~~ court following a trial before the ~~judge~~ court, either party or both parties may present evidence to justify a departure from the voluntary presumptive sentence range determined under § 16-90-803.

(B) The ~~judge~~ court may allow argument either during the sentencing phase of a trial or at a separate hearing on the matter of departing from the voluntary presumptive sentencing range determined under § 16-90-803 if ~~he or she~~ the court finds that ~~it~~ argument would be helpful.

(C)(i) When sentencing is done by the court following the entry of a plea of guilty, nolo contendere, or a negotiated plea of guilty, the court shall enter the sentence on the record.

(ii) After the court enters the sentence on the record under subdivision (b)(1)(C)(i) of this section, the prosecuting attorney shall provide in writing the credible reasons for a departure from the voluntary presumptive sentencing range, if a departure from the voluntary presumptive sentencing range is applicable.

(2)(A) If both ~~sides~~ parties agree on a recommended sentence, the ~~judge~~ court may choose to accept or reject the agreement based upon the facts of the case and whether ~~those~~ the facts support the voluntary presumptive sentence range determined under § 16-90-803 or a departure different from any recommendation.

(B)(i) If there is an agreed departure from the voluntary presumptive sentence range under § 16-90-803, ~~written reasons shall be supplied by~~ the parties shall supply written reasons to the court to attach to the ~~commitment~~ sentencing order and to ~~forward~~ report to the Arkansas

Sentencing Commission.

(ii) The written reasons required under subdivision (b)(2)(B)(i) of this section shall include:

(a) A listing of the charges and sentencing enhancements against the offender as they were set out in the first charging instrument as well as any additional charges or sentence enhancements subsequently added in the case, if any; and

(b) A thorough recitation of the facts underlying the departure from the presumptive sentence range under § 16-90-803.

(C) If the ~~judge~~ court rejects the agreement under subdivision (b)(2)(A) of this section, the ~~defendant~~ offender shall be allowed to withdraw his or her plea.

(c) The following is a nonexclusive list of mitigating factors ~~which~~ that may be considered as a reason or reasons for departure from the voluntary presumptive sentence range under § 16-90-803:

~~(i) Mitigating Factors.~~

~~(A)~~(1) While falling short of a defense, the victim played an aggressive role in the incident or provoked or willingly participated in ~~it;~~ the incident;

~~(B)(i) While falling short of a defense, the person lack substantial capacity for judgment because of physical or mental impairment~~

~~(ii) Voluntary use of drugs or alcohol does not fall within this factor;~~

~~(C)~~(2) The offender played a minor or passive role in the ~~crime~~ commission of the current offense;

~~(D)~~(3) Before detection, the offender compensated or made a good faith effort to compensate the victim for any damage or injury sustained by the victim;

~~(E)~~(4) The current offense was principally accomplished by another person, and the offender manifested extreme caution or sincere concern for the safety or well-being of the victim;

~~(F)~~(5) The offender or the offender's children suffered a continuing pattern of physical or sexual abuse by the victim of the current offense, and the current offense is a response to ~~that~~ the physical or sexual abuse;

~~(G)~~(6) The ~~operation of the multiple offense policy~~ inclusion of multiple offenses in calculating the voluntary presumptive sentence range under § 16-90-803 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter;

~~(H)~~(7) ~~Before~~ If the current offense is a sexual offense, before detection in ~~sexual offenses~~ the sexual offense, the offender has voluntarily admitted the nature and extent of the sexual offense and has sought and participated in professional treatment or counseling for ~~such offenses~~ the sexual offense; ~~or~~

~~(I)~~(8) Upon motion of the state stating that the ~~defendant~~ offender has made a good faith effort to provide substantial assistance to the investigation or prosecution of another person who has committed an offense, the circumstances listed below may be weighed as mitigating factors with respect to the ~~defendant's~~ offender's offense:

~~(i)~~(A) The timeliness of the ~~defendant's~~ offender's assistance;

~~(ii)~~(B) The nature and extent of the ~~defendant's~~ offender's assistance; and

~~(iii)~~(C) The truthfulness, completeness, and demonstrable reliability of any information or testimony provided by the ~~defendant; and~~ offender; and

(9)(A) Any other compelling reason.

(B) If any other compelling reason is used as a mitigating factor under this subsection, additional details regarding the negotiated plea, if applicable, and why the sentence was a downward departure from the voluntary presumptive sentence shall be included.

~~(2) Aggravating Factors.~~

(d) The following is a nonexclusive list of aggravating factors that may be considered as a reason or reasons for departure from the voluntary presumptive sentence range determined under § 16-90-803:

~~(A)~~(1) The offender's conduct during the commission of the current offense manifested deliberate cruelty to the victim exhibited by degrading, gratuitous, vicious, torturous, and demeaning physical or verbal abuse, unusual pain, or violence in excess of that necessary to accomplish the criminal purpose;

~~(B)~~(2) The offender knew or should have known that the victim

was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health;

~~(C)~~(3) The current offense was a major economic offense or series of offenses, ~~so~~ as identified by a consideration of any of the following factors:

~~(i)~~(A) The current offense involved multiple victims or multiple incidents per victim;

~~(ii)~~(B) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

~~(iii)~~(C) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

~~(iv)~~(D)(i) The ~~defendant~~ offender used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(ii) ~~This factor~~ The factor described under subdivision (d)(3)(D)(i) of this section does not apply if it constitutes an element of the ~~crime~~ current offense; or

~~(v)~~(E) The ~~defendant~~ offender has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions;

~~(D)~~(4)(A) The current offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual controlled substance offense.

(B) The presence of two (2) or more of the ~~circumstances listed below~~ following circumstances is an aggravating factor with respect to the current offense:

(i) The current offense involved at least three (3) separate transactions ~~wherein~~ in which controlled substances were sold, transferred, or possessed with ~~intent to do so~~ a purpose to sell or transfer the controlled substance;

(ii) The current offense involved an attempted or actual sale or transfer of a controlled ~~substances~~ substance in ~~amounts~~ an amount substantially larger than the statutory minimum ~~which~~ that defines the current offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The offender used his or her position or status to facilitate the commission of the current offense, including without limitation positions of trust, confidence, or fiduciary relationships, ~~for example,~~ such as a pharmacist, physician, or other medical professional; or

(vi) The offender has received substantial income or resources from his or her involvement in ~~drug~~ trafficking a controlled substance;

~~(E)~~(5)(A) The ~~offender~~ current offense is a felony and the offender employed a firearm in the course of or in furtherance of the felony or in immediate flight ~~therefrom~~ from the felony.

(B) ~~This factor~~ The factor described under subdivision (d)(5)(A) of this section does not apply to an offender convicted of a felony, an element of which is:

(i) Employing or using, or threatening or attempting to employ or use, a deadly weapon;

(ii) Being armed with a deadly weapon;

(iii) Possessing a deadly weapon;

(iv) Furnishing a deadly weapon; or

(v) Carrying a deadly weapon;

~~(F)~~(6) The current offense was a sexual offense and was part of a pattern of criminal behavior with the same or different victims under ~~the age of~~ eighteen (18) years of age manifested by multiple incidents over a prolonged period of time;

~~(G)~~(7) The ~~operation of the multiple offense policy~~ inclusion of multiple offenses in calculating the voluntary presumptive sentence range under § 16-90-803 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter;

~~(H)~~(8) The current offense was committed in a manner that exposed risk of injury to ~~individuals~~ persons other than the victim or victims, ~~for example,~~ including without limitation shooting a firearm into a

crowd of people;

~~(I)~~(9) The current offense was a violent or sexual offense committed in the victim's zone of privacy, ~~for example, his or her~~ including without limitation the victim's home or the curtilage ~~thereof~~ of the victim's home;

~~(J)~~(10) The offender ~~attempts~~ attempted to cover or conceal the current offense by intimidation of witnesses, destruction or tampering with evidence, or purposely misleading authorities;

~~(K)~~(11) The current offense was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody; ~~or~~

~~(L)~~(12) ~~In offenses related to vehicular homicides~~ If the current offense is related to a vehicular homicide, the offender ~~does~~ did not have the minimum insurance required by law~~.~~; and

(13)(A) Any other compelling reason.

(B) If any other compelling reason is used as an aggravating factor under this subsection, additional details regarding the negotiated plea, if applicable, and why the sentence was an upward departure from the voluntary presumptive sentence shall be included.

~~(d)~~(e) This section shall not apply when a jury has recommended a sentence to the ~~trial judge~~ trial court.

~~(e)(1) For all arrests or offenses occurring before July 1, 2005, that have not reached a final disposition as to judgment in court, sentencing should follow the law in effect at the time the offense occurred.~~

~~(2) Any defendant is subject to the sentencing guidelines in effect at that time and not under the provisions of this section.~~

SECTION 16. Arkansas Code § 16-93-101, concerning definitions for probation and parole, is amended to add additional subdivisions to read as follows:

(13) "Serious conditions violation" means a violation of the conditions of a parolee's parole or probationer's probation that results from an arrest for a misdemeanor offense that does not involve:

(A) An act involving a violent misdemeanor that provides the prosecuting attorney with the option to revoke the probationer's probation or parolee's parole, or allow the Department of Community Correction to utilize the sanctions provided under this chapter;

(B) An offense for which a conviction would require the person to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(C) A misdemeanor offense of harassment or stalking or that contains threat of violence to a victim, or a threat of violence to a family member of the victim of the offense for which the defendant was placed on probation or parole;

(D) A misdemeanor offense of driving or boating while intoxicated, § 5-65-103, when the probationer or parolee is currently being supervised for a felony offense of § 5-65-103, § 5-10-104, or § 5-10-105, and the felony offense was alcohol- or drug-related; or

(E) Except for an offense under the Uniform Controlled Substances Act, § 5-64-101 et seq., a misdemeanor offense that is a lesser included offense or falls within the same chapter of the Arkansas Criminal Code of the offense for which the defendant was placed on probation or parole; and

(14) "Technical conditions violation" means:

(A) A violation of the conditions of a parolee's parole or a probationer's probation that results from a noncriminal act or positive drug screen; or

(B) The parolee or probationer absenting himself or herself from supervision.

SECTION 17. Arkansas Code § 16-93-306 is amended to read as follows:

16-93-306. Probation generally — Supervision.

(a)(1) The Director of the Department of Community Correction with the advice of the Board of Corrections shall establish written policies and procedures governing the supervision of probationers designed to enhance public safety and to assist the probationers in integrating into society.

(2)(A) The supervision of probationers shall be based on evidence-based practices including a validated risk-needs assessment.

(B) Decisions shall target the probationer's criminal risk factors with appropriate supervision and treatment.

(b) A probation officer shall:

(1) Investigate all cases referred to him or her by the director, the sentencing judge, or the prosecuting attorney;

(2) Furnish to each probationer under his or her supervision a written statement of the conditions of probation and instruct the probationer that he or she ~~must~~ is required to stay in compliance with the conditions of probation or risk revocation under § 16-93-308;

(3) Develop a case plan for each individual who is assessed as a moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the probationer's conduct and condition through visitation, required reporting, or other methods, and report to the sentencing court of that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a probationer to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the probationer, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial screening and, if necessary, a comprehensive assessment.

(C) The results of the risk-needs assessment shall assist in making decisions that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(7) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

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

(2) The ~~department~~ Department of Community Correction shall require public and private treatment and service providers that receive state funds for the treatment of or service for probationers to use evidence-based programs and practices.

(d)(1) The ~~department~~ Department of Community Correction shall have the authority to sanction probationers administratively without utilizing the

revocation process under § 16-93-307.

(2)(A) The ~~department~~ Department of Community Correction shall develop an intermediate sanctions procedure and grid to guide a probation officer in determining the appropriate response to a violation of conditions of supervision.

(B) Intermediate sanctions administered by the ~~department~~ Department of Community Correction are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening and or treatment;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days or incarceration in a Department of Community Correction or Department of Correction facility for no more than one hundred eighty (180) days.

(ii)(a) Incarceration as an intermediate sanction shall not be used more than ~~ten (10)~~ six (6) times with an individual probationer~~, and~~.

(b) ~~no~~ A probationer shall accumulate no more than thirty (30) days' incarceration in a county jail or no more than three hundred sixty (360) days' incarceration in a Department of Community Correction or Department of Correction facility as an intermediate sanction before the probation officer recommends a violation of the person's probation under § 16-93-307.

(c) A probationer is subject to a period of incarceration of:

(1) Up to ninety (90) days in a Department of Community Correction or Department of Correction facility for a technical conditions violation; and

(2) Exactly one hundred eighty (180) days in a Department of Community Correction or Department of Correction facility for a serious conditions violation.

(d) A probationer may not be

incarcerated more than two (2) times as a probation sanction in a Department of Community Correction or Department of Correction facility.

(4) The Department of Community Correction shall notify the prosecuting attorney in writing when a probationer has been incarcerated due to an administrative sanction under this subsection and shall include an explanation of the cause for incarceration as well as the result of the sanction, if applicable.

(e) Any time in custody for which the probationer is held before a period of incarceration under this section is administered shall not count as period of incarceration ordered under subdivision (d)(3)(E)(ii)(a) of this section or toward the total accumulation of days of incarceration as set forth in subdivision (d)(3)(E)(ii)(b) of this section.

(f) A sanction under this section is not available to a person serving a suspended imposition of sentence.

(g) A period of incarceration under this section:

(1) May be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion; and

(2) Shall not be reduced under this section for more than fifty percent (50%) of the total time of incarceration ordered to be served.

(h)(1)(A) A probationer subject to an administrative probation sanction under subsection (d) of this section does not have the right to an attorney at the administrative probation sanction but may elect instead to have a probation sanction heard in circuit court as provided in this subchapter and in which he or she has the right to an attorney.

(B) This subsection does not prohibit a probationer from conferring with a privately retained attorney during the administrative probation sanction process.

(2)(A) The Department of Community Correction shall inform the probationer who is subject to a probation sanction under this section in writing that he or she may elect to have the probation sanction heard in circuit court.

(B) If the probationer elects to have his or her probation sanction heard in circuit court, the Department of Community Correction shall notify the prosecuting attorney and cause a petition to hear the probation sanction to be filed in the circuit court within ten (10) days of the

election.

SECTION 18. Arkansas Code § 16-93-308 is amended to read as follows:

16-93-308. Probation generally — Revocation — Definition.

(a)(1) At any time before the expiration of a period of suspension of sentence or probation, a court may summon a defendant on probation or who is serving a suspended imposition of sentence to appear before ~~it~~ the court or may issue a warrant for the defendant's arrest.

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

(b)(1) At any time before the expiration of a period of suspension of sentence or probation, any law enforcement officer may arrest a defendant on probation or serving a suspended imposition of sentence without a warrant if the law enforcement officer has reasonable cause to believe that the defendant:

(A) ~~has~~ Has failed to comply with a condition of his or her suspension of sentence or probation; or

(B) Is exhibiting behavior that can be construed to be a threat to:

(i) Abscond from supervision; or

(ii) Not comply with an intermediate sanction under § 16-93-306(d) or § 16-93-309(a)(4).

(2) If a defendant on probation is arrested by a probation officer employed by the Department of Community Correction for a violation of the defendant's probation and taken to a county jail for a reason listed under subdivision (b)(1)(B) of this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

(c)(1) A defendant arrested for violation of suspension of sentence or probation shall be taken immediately before the court that suspended imposition of sentence or, if the defendant was placed on probation, before the court supervising the probation, or, if the defendant is subject to administrative probation sanction under § 16-93-306(d), to the appropriate authority in the Department of Community Correction if practicable or, if transport to an appropriate authority of the Department of Community Correction is not practicable, then to the county jail.

(2) If a defendant subject to administrative probation sanction

is transported to a county jail, then the county shall be reimbursed at the daily prevailing rate for the costs of incarceration.

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

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

(f) A court may revoke a suspension of sentence or probation subsequent to the expiration of the period of suspension of sentence or probation if before expiration of the period:

(1) The defendant is arrested for violation of suspension of sentence or probation;

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

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

(4) The defendant has been:

(A) Issued a citation in lieu of arrest under Rule 5 of the Arkansas Rules of Criminal Procedure for violation of suspension of sentence or probation; or

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

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

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

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

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

(h)(1) A court shall not revoke a suspension of sentence or probation because of a person's inability to achieve a high school diploma, high school equivalency diploma approved by the Department of Career Education, or gainful employment.

(2)(A) However, the court may revoke a suspension of sentence or probation if the person fails to make a good faith effort to achieve a high school diploma, high school equivalency diploma approved by the Department of Career Education, or gainful employment.

(B) As used in this section, "good faith effort" means a person:

(i) Has been enrolled in a program of instruction leading to a high school diploma or a high school equivalency diploma approved by the Department of Career Education and is attending a school or an adult education course; or

(ii) Is registered for employment and enrolled and participating in an employment-training program with the purpose of obtaining gainful employment.

(i)(1)(A) Except as provided for in subdivision (i)(2) of this section, if a defendant on probation is subject to a revocation hearing under this subchapter or an administrative probation sanction for a technical conditions violation or a serious conditions violation, the defendant on probation is subject to confinement according to the time periods set out in § 16-93-306(d) and § 16-93-309(a)(4) without having his or her probation revoked.

(B)(i) A defendant on probation is subject to having his or her probation revoked and being sentenced to the Department of Correction or the Department of Community Correction for a subsequent violation of his or her probation if the defendant has been confined six (6) times under § 16-93-306(d).

(ii) After a defendant on probation has been confined two (2) times under either § 16-93-306(d) or § 16-93-309(a)(4) for any combination of a technical conditions violation or serious conditions

violation for any period of time, the defendant on probation is subject to having his or her probation revoked and being sentenced to the Department of Correction or the Department of Community Correction for a subsequent violation of his or her probation.

(2)(A) A defendant is subject to having his or her probation revoked under this section for a technical conditions violation or a serious conditions violation without having been sanctioned for a period of confinement set out under § 16-93-306(d) or § 16-93-309(a)(4) if upon the filing of a petition in the court with jurisdiction the Department of Community Correction or the prosecuting attorney proves by a preponderance of the evidence that the defendant is engaging in or has engaged in behavior that poses a threat to the community.

(B) If a prosecuting attorney alleges a technical conditions violation or a serious conditions violation under subdivision (i)(2)(A) of this section and meets the standard established under subdivision (i)(2)(A) of this section, the court may revoke the defendant's probation and sentence him or her to a period of time exceeding the time periods set out under § 16-93-306(d) or § 16-93-309(a)(4).

(3) A period of confinement that a defendant on probation serves for a probation violation but before being administratively sanctioned or sanctioned by the circuit court shall not count as a period of confinement for the purposes of the aggregate number of periods of confinement under this subsection or under § 16-93-306(d)(3)(E)(ii)(a) nor shall the number of days of confinement count toward the total accumulation of days of confinement as set forth in § 16-93-306(d)(3)(E)(ii)(b).

(j) To the extent that a participant in a specialty court program is subject to this section, any period of confinement ordered by the specialty court is not subject to the accumulation of sanctions under subsection (i) of this section nor is a specialty court program bound by the time periods under § 16-93-306(d) or § 16-93-309(a)(4).

SECTION 19. Arkansas Code § 16-93-309 is amended to read as follows:

16-93-309. Probation generally — Revocation hearing — Sentence alternatives — Sanctions.

(a) Following a revocation hearing held under § 16-93-307 and in which

a defendant on probation or who is serving a suspended imposition of sentence has been found guilty or has entered a plea of guilty or nolo contendere, the court may:

(1) Continue the period of suspension ~~of imposition~~ of sentence or continue the period of probation;

(2) Lengthen the period of suspension of sentence or the period of probation within the limits set by § 5-4-306;

(3) Increase the fine within the limits set by § 5-4-201;

(4)(A) Impose a period of confinement to be served during the period of suspension ~~of imposition~~ of sentence or period of probation~~; or~~.

(B)(i) A period of confinement ordered under subdivision (a)(4)(A) of this section resulting from a technical conditions violation or serious conditions violation of probation shall be for the following periods, subject to subsection (b) of this section and § 16-93-308(i)(2)(A), before the defendant on probation is released and returned to probation:

(a) Up to ninety (90) days' confinement for a technical conditions violation; and

(b) Exactly one hundred eighty (180) days' confinement for a serious conditions violation.

(ii) Any time in custody for which the defendant is held before a period of confinement is ordered by the court under subdivision (a)(4)(A) of this section shall not be credited to the overall period of confinement ordered under subdivision (a)(4) of this section or toward the maximum number of periods of confinement or the maximum number of days authorized under § 16-93-306(d)(3)(E).

(C) The periods of confinement under subdivision (a)(4)(B) of this section are not available to a person serving a suspended imposition of sentence; or

(5) Impose any conditions that could have been imposed upon conviction of the original offense.

(b)(1) A period of confinement under subdivision (a)(4) of this section may be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion.

(2) A period of confinement shall not be reduced under subdivision (a)(4) of this section for more than fifty percent (50%) of the total time of confinement ordered to be served.

(3) A period of confinement under subdivision (a)(4) of this section shall not be reduced by any time served by the defendant while he or she awaits a court hearing to challenge the imposition of the sanction.

(c)(1) If a defendant is in custody awaiting a hearing under this section for a technical conditions violation or a serious conditions violation, the hearing shall be conducted as soon as practicable but no later than thirty (30) business days from the date the defendant was taken into custody.

(2) If a defendant on probation is in custody in a county jail awaiting a hearing to challenge the imposition of a sanction under subdivision (a)(4) of this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

~~(b)~~(d) Following a revocation hearing in which a defendant is ordered to continue on a period of suspension of sentence or a period of probation, ~~nothing prohibits the court,~~ upon finding the defendant guilty at a subsequent revocation hearing, ~~from~~ the court may:

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

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

~~(c)~~(e) If the suspension of sentence or probation of a defendant is subsequently revoked and the defendant is sentenced to a term of imprisonment, any period of time actually spent in confinement due to the original revocation shall be credited against the subsequent sentence.

(f) The location of the appropriate confining facility in which a defendant serves a period of confinement for a technical conditions violation or a serious conditions violation shall be determined by the Board of Corrections.

(g) Noncompliance with program requirements approved by the Board of Corrections or violent or sexual behavior while confined for a technical conditions violation or serious conditions violation under this section may result in revocation of the defendant's probation for a period of time exceeding the limitations of subdivision (a)(4) of this section, up to and including the time remaining on the defendant's original sentence.

(h) To the extent that a participant in a specialty court program is subject to this section, any period of confinement ordered by the specialty

court is not subject to the periods of confinement required under subdivision (a)(4) of this section.

SECTION 20. Arkansas Code § 16-93-310 is amended to read as follows:

16-93-310. Probation generally — Revocation — Community correction program.

(a) When a person sentenced under a community correction program, § 5-4-312, violates any terms or conditions of his or her sentence or term of probation, revocation of the sentence or term of probation shall be consistent with the procedures under this subchapter.

(b) Upon revocation, the court of jurisdiction shall determine whether the offender shall remain under the jurisdiction of the court and be assigned to a more restrictive community correction program, facility, or institution for a period of time or committed to the Department of Community Correction.

(c)(1) If committed to the Department of Correction, the court shall specify if the commitment is for judicial transfer of the offender to the Department of Community Correction or is a regular commitment.

(2)(A) The court shall commit the eligible offender to the custody of the Department of Correction under this subchapter for judicial transfer to the Department of Community Correction subject to the following:

(i) That the sentence imposed provides that the offender shall serve no more than ~~two (2)~~ three (3) years of confinement, with credit for meritorious good time, with initial placement in a Department of Community Correction facility; and

(ii) That the initial placement in the Department of Community Correction is conditioned upon the offender's continuing eligibility for Department of Community Correction placement and the offender's compliance with all applicable rules ~~and regulations~~ established by the Board of Corrections for community correction programs.

(B) Post-prison supervision shall accompany and follow community correction programming when appropriate.

SECTION 21. Arkansas Code § 16-93-705, concerning the procedures of parole revocation, is amended to add a new subsection to read as follows:

(h) A parolee whose parole is revoked under this section due to a technical conditions violation or serious conditions violation and is

sentenced to any period of incarceration resulting from that revocation is subject to the periods of incarceration under § 16-93-715.

SECTION 22. Arkansas Code § 16-93-712 is amended to read as follows:

16-93-712. Parole supervision.

(a)(1) The Parole Board shall establish written policies and procedures governing the supervision of parolees designed to enhance public safety and to assist the parolees in reintegrating into society.

(2)(A) The supervision of parolees shall be based on evidence-based practices including a validated risk-needs assessment.

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

(b) A parole officer shall:

(1) Investigate each case referred to him or her by the Chair of the Parole Board, the Department of Community Correction, or the prosecuting attorney;

(2) Furnish to each parolee under his or her supervision a written statement of the conditions of parole and instruct the parolee that he or she must stay in compliance with the conditions of parole or risk revocation under § 16-93-705;

(3) Develop a case plan for each individual who is assessed as being moderate to high risk to reoffend based on the risk and needs assessment that targets the criminal risk factors identified in the assessment, is responsive to individual characteristics, and provides supervision of offenders according to that case plan;

(4) Stay informed of the parolee's conduct and condition through visitation, required reporting, or other methods and shall report to the board that information upon request;

(5) Use practicable and suitable methods that are consistent with evidence-based practices to aid and encourage a parolee to improve his or her conduct and condition and to reduce the risk of recidivism;

(6)(A) Conduct a validated risk-needs assessment of the parolee, including without limitation criminal risk factors and specific individual needs.

(B) The actuarial assessment shall include an initial

screening and, if necessary, a comprehensive assessment;

(7) Make decisions with the assistance of the risk-needs assessment that are consistent with evidence-based practices on the type of supervision and services necessary to each parolee; and

(8) Receive annual training on evidence-based practices and criminal risk factors, as well as instruction on how to target these factors to reduce recidivism.

(c)(1) The ~~department~~ Department of Community Correction shall allocate resources, including the assignment of parole officers, to focus on moderate-risk and high-risk offenders as determined by the validated risk-needs assessment provided in subdivision (b)(6) of this section.

(2) The ~~department~~ Department of Community Correction shall require each public and private treatment and service provider that receives state funds for the treatment of or service for parolees to use evidence-based programs and practices.

(d)(1) The ~~department~~ Department of Community Correction shall have the authority to sanction a parolee administratively without engaging the revocation process under § 16-93-705.

(2)(A)(i) The ~~department~~ Department of Community Correction shall develop an intermediate sanctions procedure and grid to guide a parole officer in determining the appropriate response to a violation of conditions of supervision.

(ii) The intermediate sanctions procedure shall include a requirement that the parole officer consider multiple factors when determining the sanction to be imposed, including previous violations and sanctions and the severity of the current and prior violation.

(B) Intermediate sanctions administered by the ~~department~~ Department of Community Correction are required to conform to the sanctioning grid.

(3) Intermediate sanctions shall include without limitation:

(A) Day reporting;

(B) Community service;

(C) Increased substance abuse screening or treatment, or both;

(D) Increased monitoring, including electronic monitoring and home confinement; and

(E)(i) Incarceration in a county jail for no more than seven (7) days *or incarceration in a Department of Community Correction facility or Department of Correction facility for no more than one hundred eighty (180) days*.

(ii)(a) *Incarceration as an intermediate sanction shall not be used more than* ~~*seven (7)*~~ *six (6) times with an individual parolee*~~*, and no parolee shall accumulate more than twenty-one (21) days' incarceration as an intermediate sanction before the parole officer files for revocation under § 16-93-706*~~.

(b) A parolee shall accumulate no more than twenty-one (21) days' incarceration in a county jail or no more than three hundred sixty (360) days' incarceration in a Department of Community Correction facility or Department of Correction facility as an intermediate sanction before the parole officer recommends a violation of the person's parole under § 16-93-706.

(c) A parolee is subject to a period of incarceration of:

(1) Up to ninety (90) days in a Department of Community Correction facility or Department of Correction facility for a technical conditions violation; and

(2) Exactly one hundred eighty (180) days in a Department of Community Correction or Department of Correction facility for a serious conditions violation.

(d) A parolee may not be incarcerated more than two (2) times as a parole sanction in a Department of Community Correction facility or Department of Correction facility.

(e) Any time in custody for which the parolee is held before a period of incarceration under this section is administered shall not count as period of incarceration ordered under (d)(3)(E)(ii)(a) of this section or toward the total accumulation of days of incarceration as set forth in subdivision (d)(3)(E)(ii)(b) of this section.

(f) A period of incarceration under this section:

(1) May be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion; and

(2) Shall not be reduced under this section for more than fifty

percent (50%) of the total time of incarceration ordered to be served.

(g) If a parolee is in custody in a county jail awaiting an administrative sanction under this section, the state shall reimburse the county for the costs of incarceration at the prevailing rate of reimbursement.

SECTION 23. Arkansas Code Title 16, Chapter 93, Subchapter 7, is amended to add an additional section to read as follows:

16-93-715. Revocation — Technical conditions violations and serious conditions violations.

(a)(1) If a parolee is subject to a parole revocation hearing under this subchapter for a technical conditions violation or a serious conditions violation, the parolee is subject to confinement for the following periods, subject to subdivision (a)(2)(A) of this section, before being released and returned to parole supervision:

(A) Up to ninety (90) days' confinement for a technical conditions violation; and

(B) Exactly one hundred eighty (180) days' confinement for a serious conditions violation.

(2)(A) A period of confinement under subdivision (a)(1) of this section may be reduced by the Department of Correction or the Department of Community Correction for good behavior and successful program completion.

(B) A period of confinement shall not be reduced under subdivision (a)(2)(A) of this section for more than fifty percent (50%) of the total time of confinement ordered to be served.

(3) Any time in custody for which the person is held before a period of confinement is ordered to be served under subdivision (a)(1) of this section shall not be credited to the overall period of confinement ordered under subdivision (a)(1) of this section.

(b)(1) Except as provided for in subdivision (b)(2) of this section, if a parolee is subject to a revocation hearing under this subchapter or an administrative parole sanction for a technical conditions violation or a serious conditions violation, the parolee is subject to confinement according to the time periods set out in § 16-93-712(d) and subdivision (a)(1) of this section without having his or her parole revoked.

(2)(A) A parolee is subject to having his or her parole revoked

and being returned to the Department of Correction or the Department of Community Correction for the next violation of his or her parole if the parolee has been confined six (6) times under § 16-93-712(d).

(B) After a parolee has been confined two (2) times under subsection (a)(1) of this section for any combination of a technical conditions violation or serious conditions violation for any period of time, the parolee is subject to having his or her parole revoked and being returned to the Department of Correction or the Department of Community Correction for the next violation of his or her parole.

(C) A parolee is subject to having his or her parole revoked and being returned to the Department of Correction or the Department of Community Correction under this section without having been sanctioned for a period of confinement set out under § 16-93-712(d) or subsection (a)(1) of this section if the Parole Board determines by a preponderance of the evidence that the parolee is engaging in or has engaged in behavior that poses a threat to the community.

(c) The location of the appropriate confining facility in which a parolee serves a period of confinement under this section shall be determined by the Board of Corrections.

(d) A period of confinement that a parolee serves as a result of being arrested for a parole violation but before being administratively sanctioned shall not count as a period of confinement for the purposes of the aggregate number of periods of confinement under this section.

(e) Noncompliance with Department of Correction or Department of Community Correction program requirements or violent or sexual behavior while confined for a technical conditions violation or serious conditions violation under this section may result in revocation of the parolee's parole for a period of time exceeding the limitations of subdivision (a)(1) of this section, up to and including the time remaining on the person's original sentence.

SECTION 24. Arkansas Code § 16-93-1202(6), concerning the definition of "eligibility" or "eligible offender" in the context of community correction, is amended to read as follows:

(6) "Eligibility" or "eligible offender" means any person convicted of a felony who is by law eligible for such sentence or who is

otherwise under the supervision of the Department of Community Correction and who falls within the population targeted by the General Assembly for inclusion in community correction facilities ~~or who is otherwise under the supervision of the Department of Community Correction~~ and who has not been subject to a disciplinary violation for a violent act or for sexual misconduct while in the custody of a jail or correctional facility and does not have a current or previous conviction for a violent or sexual offense listed under subdivision (10)(A)(iii) of this section;

SECTION 25. Arkansas Code § 16-93-1202(10), concerning the definition of "target group" in the context of community correction, is amended to read as follows:

(10)(A)(i) "Target group" means a group of offenders and offenses determined to be, but not limited to, theft, theft by receiving, hot checks, residential burglary, commercial burglary, failure to appear, fraudulent use of credit cards, criminal mischief, breaking or entering, drug paraphernalia, driving while intoxicated, fourth or subsequent offense, all other Class B felonies, Class C felonies, or Class D felonies that are not either violent or sexual and that meet the eligibility criteria determined by the General Assembly to have significant impact on the use of correctional resources, Class A controlled substance felonies and Class B controlled substance felonies, and all other unclassified felonies for which the prescribed limitations on a sentence do not exceed the prescribed limitations for a ~~Class C~~ Class B felony and that are not either violent or sexual.

(ii) Offenders committing solicitation, attempt, or conspiracy of the substantive offenses listed in subdivision (10)(A)(i) of this section are also included in the group.

(iii) As used in this subdivision (10)(A), "violent or sexual" includes all offenses against the person codified in § 5-10-101 et seq., § 5-11-101 et seq., § 5-12-101 et seq., § 5-13-201 et seq., § 5-13-301 et seq., and § 5-14-101 et seq., ~~and~~ any offense containing as an element of the offense the use of physical force, the threatened use of serious physical force, the infliction of physical harm, or the creation of a substantial risk of serious physical harm, and an offense for which the offender is required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.

(iv) For the purpose of the sealing of a criminal record under § 16-93-1207, "target group" includes any misdemeanor conviction except a misdemeanor conviction for which the offender is required to register as a sex offender or a misdemeanor conviction for driving while intoxicated.

(B) ~~Offenders~~ Except for those offenders assigned to a technical violator program, only those offenders and offenses falling within the target group population may access community correction facilities ~~pursuant to § 16-93-1208;~~ whether by judicial transfer, administrative transfer, drug court sanction, or probation sanction.

(C) Final determination of eligibility for placement in any community correction center or program is the responsibility of the Department of Community Correction;

SECTION 26. Arkansas Code § 16-93-1202(13), concerning the definition of "trial court" in the context of community correction, is amended to read as follows:

(13) "Trial court" means any court of this state having jurisdiction of an eligible offender and the power to sentence the eligible offender to the included options, subject to eligibility determination by the Department of Community Correction.

SECTION 27. Arkansas Code § 16-98-303(b)(2), concerning the responsibilities of the Department of Community Correction for a drug court program, is amended to read as follows:

(2) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, and subject to the requirements of eligibility as defined in § 16-93-1202, the Department of Community Correction:

(A) Shall:

(i) Establish standards regarding the classification of a drug court program participant as a high-risk offender or medium-risk offender;

(ii) Provide positions for persons to serve as probation officers, drug counselors, and administrative assistants;

(iii) Provide for drug testing for drug court

program participants;

(iv) Provide for intensive outpatient treatment for drug court program participants;

(v) Provide for intensive short-term and long-term residential treatment for drug court program participants; and

(vi) Develop clinical assessment capacity, including drug testing, to identify a drug court program participant with a substance addiction and develop a treatment protocol that improves the drug court program participant's likelihood of success; and

(B) May:

(i) Provide for continuous alcohol monitoring for drug court program participants, including a minimum period of one hundred twenty (120) days; and

(ii) Develop clinical assessment capacity, including continuous alcohol monitoring, to identify a drug court program participant with a substance addiction and develop a treatment protocol that improves the drug court program participant's likelihood of success.

SECTION 28. Arkansas Code § 20-47-101 is repealed as the process of arrest and citation by a law enforcement officer is already addressed under the Arkansas Rules of Criminal Procedure.

~~*20-47-101. Officers' duty to arrest insane and drunken persons.*~~

~~*It shall be the duty of all peace officers to arrest any insane or drunken persons whom they may find at large and not in the care of some discreet person. The officer shall take him or her before some magistrate of the county, city, or town in which the arrest is made.*~~

SECTION 29. Arkansas Code § 20-47-102 is repealed as the authority of a law enforcement officer to initiate the commitment process for an individual in circuit court already exists under Arkansas law.

~~*20-47-102. Officer's duty to make application to circuit court.*~~

~~*Whenever any sheriff, coroner, or constable shall discover any person to be of unsound mind who resides in the county, it shall be his or her duty to make application to the circuit court for the exercise of its jurisdiction, and thereupon the like proceedings shall be had as directed in § 20-47-103.*~~

SECTION 30. Arkansas Code § 20-47-103 is repealed as the authority of a law enforcement officer to initiate the commitment process for an individual in circuit court already exists under Arkansas law.

~~*20-47-103. Mental health judicial inquiry.*~~

~~*If any person shall give information in writing to the circuit court that any person in his or her county has a mental illness, as defined by the laws of this state, the circuit court, if satisfied that there is good cause for the exercise of its jurisdiction, shall follow the procedure for involuntary admission and treatment of the person with the mental illness, as set out in the laws of this state.*~~

SECTION 31. Arkansas Code § 20-47-104 is repealed as the commitment process for an individual in circuit court already exists under Arkansas law.

~~*20-47-104. Detention prior to commitment to hospital.*~~

~~*The circuit court with venue and jurisdiction of a person whose involuntary admission is sought shall make such orders as may be necessary to keep that person in restraint until the person can be sent by due process of law to the Arkansas State Hospital.*~~

SECTION 32. Arkansas Code § 20-47-105 is amended to read as follows:

20-47-105. Liability for costs of proceedings.

(a) When ~~*any person shall be found to be in need of involuntary admission*~~ *an individual is detained or involuntarily admitted to a mental health facility under the Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et seq., or to the state's mental health system, the costs of proceedings shall be paid* ~~*out of his or her estate or, if that is insufficient, by the county*~~ *according to § 20-47-201 et seq.*

(b) If the ~~*person*~~ *individual alleged to be in need of involuntary admission to the state's mental health system or who was detained under the Behavioral Health Crisis Intervention Protocol Act of 2017, § 20-47-801 et seq., is discharged without admission, the costs of proceedings shall be paid by the person at whose instance the* ~~*proceeding was had unless the person is an officer acting officially under the provisions of § 20-47-102, in which case the costs shall be paid by the county*~~ *proceedings were held, unless waived by the court.*

SECTION 33. Arkansas Code § 20-47-106 is amended to read as follows:

20-47-106. Liability for support.

~~Persons~~ A person legally liable for the support, care, or maintenance of ~~a person~~ an individual in need of state mental health services ~~shall be~~ under this chapter is liable for the costs of ~~such~~ mental health services to the extent that:

(1) The ~~person~~ individual in need of services lacks the ability to pay;

(2) The mental health services are not covered by a policy of insurance or other source of payment; and

~~(2)~~(3) The legally liable person is able to pay.

SECTION 34. Arkansas Code § 20-47-107 is repealed.

~~20-47-107. Recovery of money paid by county.~~

~~In all cases of appropriations out of the county treasury for the support and maintenance or confinement of any person who is in need of mental health services, the amount thereof may be recovered by the county from any parent, guardian, or custodian who by law is bound to provide for the support and maintenance of the person who is in need of mental health services if there is any parent, guardian, or custodian able to pay the amount.~~

SECTION 35. Arkansas Code § 20-47-109 is amended to read as follows:

20-47-109. Abuse of patients prohibited.

(a) ~~Employees~~ In addition to the protections provided to patients under the Adult and Long-Term Care Facility Resident Maltreatment Act, § 12-12-1701 et seq., employees, agents, servants, or officers of the Arkansas State Hospital are prohibited from striking, beating, abusing, intimidating, assaulting, or in any manner physically chastising any patient in the Arkansas State Hospital.

(b)(1) It ~~shall be~~ is the duty of all employees, agents, servants, or officers of the Arkansas State Hospital, upon learning of a violation of subsection (a) of this section, to immediately notify in writing the Director of the Arkansas State Hospital.

(2) Upon receiving a written report of a violation of this section, the director shall immediately investigate the incident and submit a

report of the result of his or her findings to the Department of Human Services State Institutional System Board at ~~the~~ its next regular meeting ~~thereof~~.

(3) If the board finds the report to be true and finds that a violation of this section has occurred, the person ~~so violating~~ who violated this section shall be ~~forthwith~~ immediately dismissed from employment at the Arkansas State Hospital and ~~shall be forever ineligible~~ is no longer eligible for further employment ~~by the institution~~ with the Arkansas State Hospital.

(4) If the board ~~should determine~~, after reading the report, determines that a violation of the state's criminal laws has occurred, ~~it~~ the board shall immediately submit the report to the prosecuting attorney.

SECTION 36. Arkansas Code Title 20, Chapter 47, is amended to add an additional subchapter to read as follows:

Subchapter 8 - Behavioral Health Crisis Intervention Protocol Act of 2017

20-47-801. Title.

This subchapter shall be known and may be cited as the "Behavioral Health Crisis Intervention Protocol Act of 2017".

20-47-802. Legislative intent.

(a) It is the intent of the General Assembly to create an established protocol for crisis intervention by law enforcement agencies and jail personnel, the court system, hospitals, healthcare providers, and mental health professionals to address the methods and procedures to be used by law enforcement agencies and jail personnel, the court system, hospitals, healthcare providers, and mental health professionals in engaging with an individual who demonstrates substantial likelihood of committing bodily harm against himself or herself, or against another person, and who is an individual with a behavioral health impairment, mental disability, mental illness, or other permanent or temporary behavioral health or mental impairment.

(b) Further, it is the intent of the General Assembly that the behavioral health crisis intervention protocol created under this subchapter and established to address engagement with a member of the public who is an individual with a behavioral health impairment results not in incarceration

or prosecution but in a lawful detention of the individual until his or her behavioral health impairment is managed to the point that the individual is substantially less likely to commit a criminal or otherwise dangerous act.

20-47-803. Definitions.

As used in this subchapter:

(1) "Activities of daily living" means without limitation:

(A) Ambulating;

(B) Transferring;

(C) Eating;

(D) Bathing;

(E) Dressing;

(F) Grooming; and

(G) Toileting;

(2)(A) "Behavioral health impairment" means a substantial impairment of emotional processes, the ability to exercise conscious control of one's actions, or the ability to perceive reality or to reason, when the impairment is manifested by instances of extremely abnormal behavior or extremely faulty perceptions that interfere with one (1) or more activities of daily living.

(B) "Behavioral health impairment" may include a temporary behavioral health or mental impairment that results when an individual is under the influence of alcohol or a controlled substance to the extent that the impairment is substantial to the point of meeting the definition under subdivision (2)(A) of this section and is a manifestation of a mental health condition or a substance abuse disorder;

(3) "Community mental health center" means an entity recognized by the Division of Behavioral Health Services under § 20-46-301 et seq.;

(4) "Comprehensive psychiatric emergency service" means a specialized psychiatric service operated by a crisis stabilization unit and located in or near a hospital or other facility that can provide psychiatric emergency services for a period of time greater than can be provided in the hospital or other facility;

(5) "Crisis intervention protocol" means the implementation of established methods and procedures, including the creation of a behavioral health crisis intervention team and establishment of a crisis stabilization

unit, to address a criminal or otherwise dangerous act by a member of the public who is an individual with a behavioral health impairment in a manner that results in the management of the individual's behavioral health impairment to the point that the individual is substantially less likely to commit a criminal or otherwise dangerous act;

(6)(A) "Crisis intervention team" means a community partnership among law enforcement agencies and jail personnel, healthcare providers, and mental health professionals.

(B) A crisis intervention team also may include consumers and family members of consumers to serve in an advisory capacity;

(7) "Crisis intervention team officer" means a law enforcement officer who is:

(A) Authorized to make arrests under the laws of this state;

(B) Trained and certified in behavioral health crisis intervention by law enforcement under § 12-9-118; and

(C) Employed by a law enforcement agency that is a participating partner in a crisis intervention team;

(8) "Crisis stabilization unit" means a public or private facility operated by or used by a behavioral health crisis intervention team in the administration of a behavioral health crisis intervention protocol;

(9) "Crisis stabilization unit catchment area" means the geographical area that a crisis stabilization unit serves;

(10) "Extended observation bed" means a bed that is used by a comprehensive psychiatric emergency service in a facility certified by the Department of Human Services, or a division of the department, for the purpose of providing comprehensive psychiatric emergency services;

(11) "Mental health professional" means a person qualified by licensure and experience in the diagnosis and treatment of behavioral health conditions;

(12) "Participating partner" means a law enforcement agency, a community mental health center, a consumer, a crisis stabilization unit, a mental health services provider, mental health professional, or a hospital that has entered into the collaborative agreement required under § 20-47-805 to implement a crisis intervention protocol;

(13) "Psychiatric emergency services" means services provided by

mental health professionals that are designed to reduce the acute psychiatric symptoms of an individual with a behavioral health impairment and, when possible, to stabilize that individual so that continuing treatment can be provided in the individual's community;

(14) "Psychiatric nurse practitioner" means a registered nurse licensed and certified by the Arkansas State Board of Nursing as an advanced practice nurse under the title of "Clinical Nurse Practitioner" or "Clinical Nurse Specialist" who:

(A) Has completed at least one (1) year of advanced practice nursing as a clinical nurse practitioner or clinical nurse specialist; and

(B) Is working within the scope of practice as authorized by law;

(15) "Psychiatric physician assistant" means a physician assistant licensed by the Arkansas State Medical Board who:

(A) Has completed at least one (1) year of practice as a physician assistant employed by a community mental health center; and

(B) Is working under the supervision of a physician at a crisis stabilization unit;

(16) "Substantial likelihood of bodily harm" means:

(A) That an individual:

(i) Has threatened or attempted to commit suicide or to inflict serious bodily harm against himself or herself;

(ii) Has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on another person, and there is a reasonable probability that the conduct will occur;

(iii) Has placed another person in reasonable fear of serious bodily harm; or

(iv) Is unable to avoid severe impairment or injury from a specific risk; and

(B) There is substantial likelihood that serious bodily harm will occur unless the individual is provided psychiatric emergency services and treatment; and

(17) "Triage and referral services" means services designed to provide evaluation of an individual with a behavioral health impairment as defined under subdivision (2)(A) of this section in order to direct that

individual to a community mental health center, mental health facility, hospital, or other mental health services provider that can provide appropriate treatment.

20-47-804. Crisis intervention protocol not exclusive — Voluntary stay at crisis stabilization unit.

(a) If during or after the initiation of a crisis intervention protocol under this subchapter a mental health professional or medical professional believes the individual being detained would benefit more from a longer commitment in a residential facility, the mental health professional or medical professional may institute commitment proceedings as authorized under § 20-47-201 et seq.

(b) If a commitment proceeding is initiated under § 20-47-201 et seq. in a court with jurisdiction, that proceeding shall control and any custodial detention or treatment as part of a crisis intervention protocol initiated under this subchapter shall cease in lieu of any commitment or treatment ordered by the court.

(c)(1) A crisis intervention protocol may be ended before the maximum detention time of seventy-two (72) hours has elapsed, as described under § 20-47-810, by the law enforcement agency who has custody of the individual at its discretion if:

(A) The individual in custody under this subchapter agrees to remain at the crisis stabilization unit voluntarily;

(B) The detaining law enforcement agency reasonably believes that that individual would not be a danger to himself or herself or to others if he or she remained at the crisis stabilization unit voluntarily; and

(C) The crisis stabilization unit agrees to allow the individual to remain at the crisis stabilization unit.

(2)(A) An individual who is released from custody and remains at a crisis stabilization unit voluntarily under this subsection is free to leave the crisis stabilization unit at any time.

(B) A crisis stabilization unit may:

(1) Discharge an individual who is released from custody and remains at the crisis stabilization unit voluntarily at its discretion;

(2) As part of the discharge process and subject to the consent of the person no longer in custody, provide the person with a follow-up treatment plan and a request that the person utilize the treatment plan, including subsequent appointments with a mental health professional.

20-47-805. Establishment of crisis intervention teams.

(a) As part of a crisis intervention protocol established under this subchapter, a law enforcement agency or community mental health center, as a participating partner, is authorized to establish a crisis intervention team or multiple crisis intervention teams to provide psychiatric emergency services and triage and referral services for individuals with a behavioral health impairment who demonstrate substantial likelihood of committing bodily harm against themselves or against another person as a more humane alternative to confinement in a jail.

(b) A crisis intervention team shall have at least one (1) designated hospital or community mental health center within the specified crisis stabilization unit catchment area that has agreed to serve as a crisis stabilization unit and to provide psychiatric emergency services, triage and referral services, and other appropriate medical services for individuals in the custody of a crisis intervention team officer or who have been referred by the community mental health center within the specified crisis stabilization unit catchment area.

(c)(1) As a participating partner and serving as a crisis stabilization unit, a hospital, community mental health center, or mental health facility may establish a comprehensive psychiatric emergency service to provide psychiatric emergency services to an individual with a behavioral health impairment for a period of time greater than allowed in a hospital or other facility's emergency department when, in the opinion of the treating physician, psychiatric nurse practitioner, or psychiatric physician assistant, the individual is likely to be stabilized within seventy-two (72) hours so that continuing treatment can be provided in the local community rather than a crisis stabilization unit or the Arkansas State Hospital.

(2)(A) During the time an individual with a behavioral health impairment is under a crisis intervention protocol and detained at a crisis stabilization unit, the individual is considered to be in the custody of the law enforcement agency that detained the individual.

(B) This subchapter does not authorize the forfeit of any state or federal constitutional right regarding the detention and custody of an individual with a behavioral health impairment who has been detained or placed in custody due to the commission of a criminal offense.

(d)(1) Two (2) or more governmental entities may jointly provide crisis intervention teams and comprehensive psychiatric emergency services authorized under this subchapter.

(2) For the purpose of addressing unique rural service delivery needs and conditions, the Department of Human Services may authorize two (2) or more hospitals, community mental health centers, or mental health services providers to collaborate in the development of crisis intervention teams and comprehensive psychiatric emergency services and shall facilitate any collaboration authorized.

20-47-806. Crisis intervention protocol — Collaborative agreements.

(a) A proposed crisis intervention protocol and crisis intervention team shall include necessary collaborative agreements among the participating hospitals, community health centers, mental health service providers, participating law enforcement agencies, and the facility that is designated as the crisis stabilization unit for the crisis stabilization unit catchment area.

(b)(1) A collaborative agreement under subsection (a) of this section shall specify that the facility designated under the collaborative agreement as the crisis stabilization unit is required to accept for screening and triage an individual who is in the custody of or detained by a law enforcement agency if:

(A) The law enforcement agency employs:

(i) A crisis intervention team officer operating within the crisis stabilization unit catchment area, whether in the field or at a local detention facility; or

(ii) A crisis intervention team officer operating within the crisis stabilization unit catchment area and has entered into an agreement with another law enforcement agency to transport an individual to a crisis stabilization unit; and

(B) The individual has been taken into custody or is detained because the individual demonstrates the substantial likelihood of

committing bodily harm against himself or herself or against another person.

(2) A participating partner that is not a law enforcement agency as part of a collaborative agreement under this section shall indemnify a participating law enforcement agency against all acts of negligence that may occur in the course of and scope of the application of a crisis intervention protocol toward another person.

20-47-807. Crisis stabilization units — Operations.

(a)(1) The internal operation of a crisis stabilization unit shall be governed by the administration of a facility designated as the crisis stabilization unit and regulated by the Department of Human Services or a division of the department.

(2) All collaborative agreements under § 20-47-806(a) shall be in compliance with the regulatory authorities under subdivision (a)(1) of this section.

(b)(1) A facility operating as a crisis stabilization unit under a crisis intervention protocol shall appoint a unit director to oversee the operation of the facility-based service.

(2) The unit director shall assure that the services provided are within the guidelines established by the collaborative agreements under § 20-47-806(a).

(c) Notwithstanding any other provision of law, this subchapter does not create an entitlement for any individual to receive psychiatric emergency services at a crisis stabilization unit.

20-47-808. Determination of need to initiate crisis intervention protocol.

(a)(1) If a crisis intervention team officer determines that an individual with a behavioral health impairment demonstrates a substantial likelihood of committing bodily harm to himself or herself or to another person, the crisis intervention team officer may take the individual into custody for the purpose of transporting the individual to the designated crisis stabilization unit serving the crisis stabilization unit catchment area in which the officer has jurisdiction.

(2) The crisis intervention team officer shall certify in writing the reasons for taking the individual into custody.

(b)(1) Only a crisis intervention team officer with jurisdictional authority to operate within a crisis stabilization unit catchment area may determine whether a person in custody should be transported to the crisis stabilization unit for that crisis stabilization unit catchment area.

(2) However, any law enforcement officer may transport the person to the crisis stabilization unit for that crisis stabilization unit catchment area when the determination under subdivision (b)(1) of this section has been made.

(c)(1) An individual transported by a crisis intervention team officer to the crisis stabilization unit or a individual referred by the community mental health center under the guidelines of a collaborative agreement under § 20-47-806(a) shall be examined by a physician, psychiatric nurse practitioner, psychiatric physician assistant, or mental health professional.

(2) If the individual does not consent to voluntary evaluation and treatment and the physician, psychiatric nurse practitioner, psychiatric physician assistant, or mental health professional determines that the individual is an individual with a behavioral health impairment, the physician, psychiatric nurse practitioner, psychiatric physician assistant, or mental health professional shall then determine if that individual may be held under the crisis intervention protocol as set out in this subchapter.

(3) If the physician, psychiatric nurse practitioner, psychiatric physician assistant, or mental health professional determines that the individual demonstrates a substantial likelihood of committing bodily harm against himself or herself or against another person because of a behavioral health impairment caused by alcohol or a controlled substance and that there is no reasonable less restrictive alternative, the individual may be held at the crisis stabilization unit until the behavioral health impairment has resolved and the individual no longer demonstrates a substantial likelihood of committing bodily harm to himself or herself or against another person.

20-47-809. Implementation of psychiatric emergency services.

(a)(1) To implement psychiatric emergency services under a crisis intervention protocol under this subchapter, a crisis stabilization unit shall request licensure from the Department of Human Services for the number of extended observation beds that are required to adequately serve the

designated crisis stabilization unit catchment area.

(2) A license for the requested extended observation beds is required before the crisis stabilization unit may put the extended observation beds into service for patients.

(b) If the Department of Human Services determines that psychiatric emergency services under this subchapter are adequate to provide for the privacy and safety of all patients receiving services in the crisis stabilization unit, the Department of Human Services may approve the location of one (1) or more of the extended observation beds within another area of the single point of entry rather than in proximity to the emergency department.

(c) Each psychiatric emergency service shall provide or contract to provide qualified physicians, licensed mental health professionals, psychiatric nurse practitioners, psychiatric physician assistants, and ancillary personnel necessary to provide services twenty-four (24) hours per day, seven (7) days per week.

(d)(1) A psychiatric emergency service provided by a crisis stabilization unit shall have at least one (1) physician, one (1) psychiatric nurse practitioner, one (1) psychiatric physician assistant, or one (1) mental health professional who is a member of the staff of the crisis stabilization unit and who is on duty and available at all times.

(2) However, the medical director of the psychiatric emergency service may waive the requirement under subdivision (d)(1) of this section if provisions are made for:

(A) A physician in the emergency department to assume responsibility and provide initial evaluation and treatment of an individual with a behavioral health impairment in the custody of a crisis intervention team officer or referred by the community mental health center;

(B) A licensed mental health professional to screen and assess an individual with a behavioral health impairment within thirty (30) minutes of notification that the individual has arrived; and

(C) The physician, psychiatric nurse practitioner, psychiatric physician assistant, or mental health professional on call for the psychiatric emergency service to evaluate the individual with a behavioral health impairment onsite within twelve (12) hours of the individual's admission.

(3) A crisis stabilization unit is encouraged to use telemedicine under this subchapter to the extent it is effective and authorized by state law.

20-47-810. Seventy-two-hour maximum time of detention.

(a) An individual with a behavioral health impairment who is admitted to a psychiatric emergency service under a crisis intervention protocol under this subchapter shall have a final disposition within a maximum of seventy-two (72) hours or be released from custody.

(b) If the individual with a behavioral health impairment cannot be stabilized within seventy-two (72) hours of entering into a crisis intervention protocol, a participating partner may institute commitment proceedings as authorized under § 20-47-201 et seq.

(c) An individual who has been released from custody and has chosen to stay at a crisis stabilization unit voluntarily under § 20-47-804(c) is not bound by the seventy-two-hour maximum time of detention under this section.

(d) As part of the discharge process after the seventy-two (72) hour hold has expired and the individual is being released from custody, and subject to the consent of the person no longer in custody, a crisis stabilization unit may provide the individual with a follow-up treatment plan and a request that the individual utilize the treatment plan, including subsequent appointments with a mental health professional.

20-47-811. Immunity from liability.

A person acting in good faith in connection with the detention of an individual with a behavioral health impairment under the crisis intervention protocol as set out in this subchapter is immune from civil or criminal liability for those acts.

20-47-812. Development of crisis intervention protocols.

(a)(1) A director of a community mental health center shall actively encourage hospitals, community mental health centers, mental health services providers, and other mental health professionals to develop psychiatric emergency services.

(2) If a collaborative agreement can be negotiated with a hospital, community mental health center, or other healthcare facility that

can provide a comprehensive psychiatric emergency service, that hospital, community mental health center, or other healthcare facility shall be given priority when designating the single point of entry.

(b) The Department of Human Services shall encourage community mental health center directors to actively work with hospitals, mental health services providers, other mental health professionals, and law enforcement agencies to develop a crisis intervention protocol and associated crisis intervention teams and psychiatric emergency services and shall facilitate the development of those collaborations.

20-47-813. Rulemaking authority.

The Department of Human Services is authorized to utilize rulemaking in order to properly implement the provisions of this subchapter concerning the certification of a nonhospital crisis stabilization unit.

SECTION 37. DO NOT CODIFY. Effective date:

(a) Sections 16 through 23 of this act are effective on and after October 1, 2017.

(b) Section 15 of this act is effective on and after January 1, 2018.

/s/J. Hutchinson

APPROVED: 03/08/2017