

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas      *As Engrossed: H3/7/13 H3/13/13 S4/5/13*  
89th General Assembly      **A Bill**  
Regular Session, 2013

HOUSE BILL 1470

By: Representatives Williams, Baine, *Shepherd*

### **For An Act To Be Entitled**

AN ACT TO ESTABLISH PRE-ADJUDICATION PROBATION  
PROGRAMS; AND FOR OTHER PURPOSES.

### **Subtitle**

TO ESTABLISH PRE-ADJUDICATION PROBATION  
PROGRAMS.

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

SECTION 1. Arkansas Code Title 5, Chapter 4 is amended to add a new subchapter to read as follows:

Subchapter 9 - Sentencing Alternative - Pre-adjudication Probation

5-4-901. Legislative intent.

The intent of this act is to provide the judiciary with an additional alternative to the disposition of criminal offenders that would assist the offender in atoning for his or her criminal transgression and promote the enforcement of the state's criminal statutes while easing the inmate burden on the county jails and the Department of Correction.

5-4-902. Definitions.

As used in this subchapter, "pre-adjudication" means the period of time after:

(1) The prosecuting attorney files a criminal information or an indictment is filed in circuit court;

(2) The person named in the criminal information or indictment is arraigned on the charge in circuit court; and

(3) The person enters the program without a guilty plea or the person



enters a plea of guilty but before the circuit court enters a judgment and pronounces a sentence against the person.

5-4-903. Program authorized.

(a)(1) Each judicial district of this state may establish a pre-adjudication probation program under this subchapter.

(2) The structure, method, and operation of the pre-adjudication probation program may differ and shall be based upon the specific needs of and resources available to the judicial district where the pre-adjudication probation program is located.

(b)(1) A pre-adjudication probation program may incorporate services from various state agencies, including without limitation the Department of Community Correction and the Department of Human Services.

(2) Participating state agencies may provide:

(A) Persons to serve as pre-adjudication probation officers, drug counselors, or other support staff;

(B) Drug testing and other substance-abuse facilities;

(C) Intensive short-term and long-term residential treatment for participants in the pre-adjudication probation program who have demonstrated a need for substance abuse treatment or other mental health-related treatment; and

(D) Other personnel, support staff, or facilities that the circuit court administering the pre-adjudication probation program finds necessary or helpful.

(c) Subject to an appropriation, funding, and position authorization, both programmatic and administrative, the Administrative Office of the Courts shall:

(1) Provide state-level coordination and support for circuit courts administering the pre-adjudication probation program;

(2) Administer funds for the maintenance and operation of local pre-adjudication probation programs;

(3) Provide training and education to judges and other professionals involved in pre-adjudication probation programs; and

(4) Operate as a liaison between judges and other state-level agencies providing services to pre-adjudication probation programs.

5-4-904. Eligibility.

(a) The judicial district in which a person is charged with a felony shall have in place a pre-adjudication probation program as authorized by this subchapter before this subchapter may be utilized by the person charged with the felony, the circuit court with jurisdiction, or the state.

(b) A person charged with a felony is eligible to participate in a pre-adjudication probation program if:

(1) The circuit court with jurisdiction over the case and the prosecuting attorney agree; and

(2) The person is not charged with one (1) of the following criminal offenses:

(A) A criminal offense for which the person would be required to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(B) A felony involving violence as listed in § 5-4-501(d)(2);

(C) A felony involving a victim who was seventeen (17) years of age or younger at the time the felony was committed; or

(D) A felony involving a victim who was sixty-five (65) years of age or older at the time the felony was committed.

(c)(1) A person charged with a traffic offense committed in any type of motor vehicle who was a holder of a commercial learner's permit or commercial driver license at the time the traffic offense was committed is ineligible to participate in a pre-adjudication probation program.

(2) As used in subdivision (c)(1) of this section, "traffic offense" does not include a parking violation, motor vehicle weight violation, or motor vehicle defect violation.

5-4-905. Sanctions.

(a)(1) A pre-adjudication probation program judge may impose sanctions on a pre-adjudication probation program participant who fails to complete certain court-ordered pre-adjudication program requirements or meet certain court-ordered pre-adjudication program goals.

(2) Sanctions may include without limitation:

(A) Time spent in the custody of the county sheriff;

(B) Additional fines;

(C) Community service;

(D) Substance abuse testing;

(E) Written assignments; and

(F) Volunteer work for a nonprofit organization.

(b) The imposition of an additional sanction under this section:

(1) Is not an execution of a sentence resulting from a conviction for the criminal offense for which the participant has entered the pre-adjudication probation program; and

(2) Does not result by itself in the expulsion of the pre-adjudication probation program participant from the pre-adjudication probation program.

5-4-906. Record expungement upon completion.

(a) A pre-adjudication probation program judge, on his or her own motion or upon a request from the participant in the pre-adjudication probation program, shall order expungement and dismissal of a case if:

(1) The participant in the pre-adjudication probation program has successfully completed a pre-adjudication probation program, as determined by the pre-adjudication probation program judge;

(2) The pre-adjudication probation program judge has received a recommendation from the prosecuting attorney for expungement and dismissal of the case; and

(3) The pre-adjudication probation program judge, after considering the past criminal history of the participant in the pre-adjudication probation program, determines that expungement and dismissal of the case is appropriate.

(b) Unless otherwise ordered by the pre-adjudication probation program court, expungement under this section shall be as described in § 16-90-901 et seq.

5-4-907. Cost, fees, and restitution.

(a) The pre-adjudication probation program judge may order the offender to pay:

(1) Court costs as provided in § 16-10-305;

(2) Any substance abuse treatment costs;

(3) Drug testing costs;

(4) Costs associated with mental health treatment;  
(5) A pre-adjudication probation program user fee;  
(6) Any restitution owed the victim of the charged criminal offense;  
(7) Necessary supervision fees;  
(8) Any applicable residential treatment fees; and  
(9) Any fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1), which are to be paid to the Department of Community Correction.

(b)(1) The pre-adjudication probation program judge shall establish a schedule for the payment of costs, fees, and restitution.

(2) The cost for substance abuse treatment, mental health treatment, drug testing, and supervision shall be set by the treatment and supervision providers respectively and made part of the order of the pre-adjudication probation program judge for payment.

(3) Pre-adjudication probation program user fees shall be set by the pre-adjudication probation program judge.

(4) Treatment, drug testing, and supervision costs or fees shall be paid to the respective providers.

(5) Fees determined or authorized under § 12-27-125(b)(17)(B) or § 16-93-104(a)(1) shall be paid to the Department of Community Correction.

(6) Restitution to the victim shall be paid directly to the victim.

(c) Court orders for costs, fees, and restitution shall remain an obligation of the participant in the pre-adjudication probation program with court monitoring until fully paid.

#### 5-4-908. Program operation.

(a)(1) A pre-adjudication probation program may require a separate judicial processing system differing in practice and design from the traditional adversarial criminal prosecution and trial systems.

(2) A pre-adjudication probation program team shall be designated by a circuit judge assigned to manage the pre-adjudication probation program docket and may include a circuit judge, a prosecuting attorney, a public defender or private defense attorney, one (1) or more probation officers, and any other individual or individuals determined

necessary by the pre-adjudication probation program judge.

(3)(A) The administrative judge of the judicial district shall designate one (1) or more circuit judges to administer the pre-adjudication probation program.

(B) If a county is in a judicial district that does not have a circuit judge who is able to administer the pre-adjudication probation program on a consistent basis, the administrative plan for the judicial circuit required by Administrative Order No. 14 of the Supreme Court may designate a state district court judge to administer the pre-adjudication probation program.

(b) Each judicial district may develop a training and implementation manual for a pre-adjudication probation program with the assistance of the:

- (1) Department of Human Services;
- (2) Department of Education;
- (3) Department of Career Education;
- (4) Department of Community Correction; and
- (5) Administrative Office of the Courts.

5-4-909. Administrative Office of the Courts.

The Administrative Office of the Courts shall:

(1) Serve as a coordinator between pre-adjudication probation program judges, the Department of Community Correction, and other parties;

(2) Establish, manage, and maintain a uniform statewide pre-adjudication probation program information system to track information and data on pre-adjudication probation program participants;

(3) Train and educate pre-adjudication probation program judges and pre-adjudication probation program staff in those judicial districts maintaining a pre-adjudication probation program;

(4) Oversee the disbursement of funds appropriated to the Administrative Office of the Courts for the maintenance and operation of local pre-adjudication probation programs based on a formula developed by the office; and

(5) Develop guidelines to serve as a framework for developing effective local pre-adjudication probation programs and to provide a structure for conducting research and evaluation for pre-adjudication probation program accountability.

5-4-910. Disposition of court costs and user fees.

(a) All court costs and pre-adjudication probation program user fees assessed by the pre-adjudication probation program judge shall be paid to the circuit court clerk for remittance to the county treasury under § 14-14-1313.

(b) The county treasurer shall credit all court costs received under this section to the county administration of justice fund to be distributed under § 16-10-307.

(c) The county treasurer shall credit all pre-adjudication probation program user fees received under this section to a fund known as the county pre-adjudication probation program fund and appropriated by the quorum court for the benefit and administration of the pre-adjudication probation program.

5-4-911. Required resources.

Each pre-adjudication probation program established under this subchapter, subject to an appropriation, funding, and position authorization, both programmatic and administrative, shall be provided with the following resources:

(1) The Department of Community Correction shall provide the following pursuant to § 5-4-903 for adult offenders:

(A) A minimum of one (1) counselor position for every thirty (30) pre-adjudication probation program participants;

(B) A minimum of one (1) probation officer position for every forty (40) pre-adjudication probation program participants;

(C) A minimum of one (1) administrative assistant position for each pre-adjudication probation program; and

(D) Drug screens and testing as needed.

(2) The Administrative Office of the Courts shall:

(A) Provide funding for additional ongoing maintenance and operation costs of local pre-adjudication probation programs not provided by the Department of Community Correction or the Department of Human Services, including without limitation local pre-adjudication probation program supplies, education, travel, and related expenses;

(B) Provide direct support to the pre-adjudication probation program judge and pre-adjudication probation program;

(C) Provide coordination between the multidisciplinary team and

the pre-adjudication probation program judge;

(D) Provide case management;

(E) Monitor compliance of pre-adjudication probation program participants with pre-adjudication probation program requirements; and

(F) Provide pre-adjudication probation program evaluation and accountability.

5-4-912. Collection of data – Reporting requirement.

(a)(1) A pre-adjudication probation program shall collect and provide data on pre-adjudication probation program applicants and all participants as required by the Administrative Office of the Courts.

(2) Data collected under subdivision (a)(1) of this section shall include:

(A) The total number of applicants;

(B) The total number of participants;

(C) The total number of successful applicants;

(D) The total number of successful participants;

(E) The reason why each unsuccessful participant did not complete the pre-adjudication probation program;

(F) Information about what happened to each unsuccessful participant;

(G) The total number of participants who were arrested for a new criminal offense while in the pre-adjudication probation program;

(H) The total number of participants who were convicted of a new criminal offense while in the pre-adjudication probation program;

(I) The total number of participants who committed a violation of one (1) or more conditions of the pre-adjudication probation program and the resulting sanction;

(J) The results of the initial risk-needs assessment review for each participant;

(K) The race and gender of each applicant;

(L) The race and gender of each participant;

(M) The race and gender of each victim of an offense committed by the applicant;

(N) The race and gender of each victim of an offense committed by the participant; and

(O) Any other data or information as required by the Administrative Office of the Courts.

(b) The data collected for evaluation purposes under subsection (a) of this section shall:

(1) Include a minimum standard data set developed and specified by the Administrative Office of the Courts; and

(2) Be maintained in the court files or be otherwise accessible by the courts and the Administrative Office of the Courts.

(c)(1) After an individual is discharged either upon completion or termination of a pre-adjudication probation program, the pre-adjudication probation program as far as is practicable shall conduct follow-up contacts with and reviews of former pre-adjudication probation program participants for key outcome indicators of drug use, recidivism, and employment.

(2)(A) The follow-up contacts with and reviews of former pre-adjudication probation program participants shall be conducted as frequently and for a period of time as determined by the Administrative Office of the Courts based upon the nature of the pre-adjudication probation program and the nature of the participants.

(B) The follow-up contacts with and reviews of former pre-adjudication probation program participants are not extensions of the pre-adjudication probation program court's jurisdiction over the pre-adjudication probation program participants.

(d) For purposes of standardized measurement of success of pre-adjudication probation programs across the state, the Administrative Office of the Courts in consultation with other state agencies shall adopt an operational definition of terms to be used in any evaluation and report of pre-adjudication probation programs such as:

- (1) "Incentives given";
- (2) "Recidivism";
- (3) "Retention";
- (4) "Relapses";
- (5) "Restarts"; and
- (6) "Sanctions imposed".

(e) Each pre-adjudication probation program shall provide all information requested by the Administrative Office of the Courts.

(f) The Administrative Office of the Courts, the Department of

Community Correction, the Office of Alcohol and Drug Abuse Prevention, and the Arkansas Crime Information Center shall work together to share and make available data to provide a comprehensive data management system for the state's pre-adjudication probation programs.

(g)(1) The Administrative Office of the Courts shall:

(A) Develop a statewide evaluation model for pre-adjudication probation programs; and

(B) Conduct ongoing evaluations of the effectiveness and efficiency of all pre-adjudication probation programs.

(2) The Administrative Office of the Courts shall submit to the General Assembly by July 1 of each year a report of the evaluations under subdivision (g)(1) of this section

*/s/Williams*