

1. SENTENCING ORDER

What is the Sentencing Order and what does it do?

The Sentencing Order (Order) replaces and combines the former Judgment and Commitment, Judgment and Disposition, and Departure Report forms. Its purpose is to document the disposition of criminal cases processed in the State's circuit courts. It provides the Arkansas Department of Correction (ADC) and the Arkansas Department of Community Correction (ACC) with the legal basis for the custody and community supervision of an offender. Courts are required to use the Order as of January 1, 2012. See A.C.A. §§ 16-90-402 and 16-90-801(d)(11)(B).

Pursuant to Arkansas Supreme Court Administrative Order Number 8 (Forms for Reporting Case Information in all Arkansas Trial Courts), where the final disposition results in a commitment to ADC, probation, suspended imposition of sentence, commitment to the ACC or to the county jail, a fine, restitution, and/or court costs, the office of the prosecuting attorney shall be responsible for completion of the Order, which shall be submitted to the circuit judge for signature, and filed in the Office of the Circuit Clerk. Where the case is dismissed or nolle prossed because of the speedy trial rule, the case is transferred, or the defendant is acquitted, the office of the prosecuting attorney shall be responsible for completion of the Reporting Form for Defense-Related Dispositions which shall be submitted to the circuit judge for signature and filed in the Office of the Circuit Clerk.

A copy of the Order may be downloaded from the Administrative Office of the Courts (AOC) web site at <http://courts.state.ar.us/aoc/forms.cfm>. A certified copy of the Order is to be delivered by the sheriff with the Defendant to the proper correctional department.

Who developed it?

A working group composed of members from the criminal justice community was established to develop the Order. A.C.A. § 16-90-402 requires representatives from the ADC, the Arkansas Judicial Council, and the Arkansas Prosecuting Attorneys' Association to develop a standardized judgment and commitment form. A.C.A. § 16-90-803 directed the Arkansas Sentencing Commission (the Commission) and the AOC to develop and implement an integrated sentencing and departure form. The Act, however, did not repeal the provision in A.C.A. § 16-90-402.

How do I differentiate between incarceration in ADC and other sanctions on the Order?

For each offense, there is a section to indicate the Defendant's sentence. Each sentence option is listed within that section. See below for a discussion of when to use a particular sanction.

- **Imposed:** This option is to be used when an offender is sentenced to a term of incarceration. Check boxes indicate whether the imposed sentence is a term of incarceration in an ADC facility, a sentence to the ADC with a judicial transfer to an ACC facility (Jud. Tran.), or a term of incarceration in a County Jail. Under the check boxes, indicate the number of months imposed. Please note: The imposed sentence includes only time for which the offender is incarcerated. It does not include suspended

imposition of sentence. A.C.A. § 5-4-104(e)(1)(B)(ii) prohibits the suspension of the execution of a sentence.

- **Probation:** This option is to be used when an offender is placed on probation. Indicate the number of months on probation. If a sentence of probation includes a term of incarceration (Probation/SIS Plus), the Order has a section for entering the amount of incarceration time in either days or months.
- **SIS:** This option is to be used when the offender is placed on Suspended Imposition of Sentence. If a sentence of SIS includes a term of incarceration (Probation/SIS Plus), the Order has a section for entering the amount of incarceration time in either days or months.
- **Other:** This option is to be used when an offender receives a sentence of Life, Life Without Parole (LWOP), or Death. If the offender receives a death sentence, enter the execution date pronounced in court in the Sentence Options section.

Sentencing Order Elements

The following are some helpful tips for completing the Sentencing Order. Instructions for completing the Sentencing Order may be found at: <https://courts.arkansas.gov/forms-and-publications/court-forms/criminal-division>.

- **Division:** Enter the number that corresponds to the judge who is presiding over the case.
- **Offender:** Enter the name, date of birth, gender and race/ethnicity of the defendant.
- **Judge:** Enter the name of the judge who *signs* the order.
- **Legal Statements:** The statements in this section reflect the legal statements that appeared on the previous judgment forms. The first box applies when a defendant is sentenced pursuant to Act 346, the First Offender Act (A.C.A. §§ 16-93-301 et. seq.) or any other statute where the court defers further proceedings without entering a judgment of guilt. The second box applies when a defendant is placed on probation, probation/SIS plus, or other alternative sanction. This statement previously appeared on the Judgment and Disposition Form. The third box applies when a defendant is sentenced to a term of incarceration in the ADC or ACC facility via judicial transfer. This statement previously appeared on the Judgment and Commitment Form.
- **State Identification Number (SID):** While the SID is not legally required, it may be obtained from the criminal information sheet or the local law enforcement agency handling the case. This is important to include (if you have it) because it ties the offense information to the offender.
- **A.C.A. # of Offense/Name of Offense:** Enter the code section in effect *at the time the offense was committed*. Use subsections if the offense was created or modified during or after the 2011 Legislative Session.
- **Arrest Tracking Number (ATN):** Each arrest will have a different ATN. It is important to include the ATN for each offense listed on the Order. The Arkansas Crime Information Center (ACIC) needs this information to tie the offense to the offender.

This information is also used by police officers in the field when making arrests. If there is no ATN, the information on offenses committed will be unavailable to the officer.

- Probation/SIS Revocation: This section indicates if a particular conviction is the result of a probation or SIS revocation. Check yes or no for every offense. An affirmative answer to this question applies to the *current offense only* and not to any new crime committed while on probation or parole. Also, if the commitment is the result of a probation revocation, the seriousness level must *still* be entered. Although the sentencing guidelines are not applicable to revocations, transfer eligibility is still determined by the seriousness level of the offense. (Please note: Do NOT enter the code section for probation/SIS revocation in the A.C.A. Number of Offense/Name of Offense section. Enter the code section for the *substantive* offense and then check the appropriate box for probation/SIS revocation.)
- Offense Date: Enter a date for all offenses listed on the Order, even if the offense is Nolle Prossed or Dismissed. Release eligibility is determined by the date of the offense. Without it, an offender's release date cannot be determined.
- Criminal History Score & Seriousness Level: Criminal history scores and seriousness levels should be calculated on all felony offenses. The seriousness level for misdemeanors may be left blank. Calculate criminal history scores prior to plea negotiations. A copy of the Criminal History Worksheet and instructions for completing the worksheet is available online at <http://www.arkansas.gov/asc/forms.html>. See A.C.A. § 16-90-803(b)(2).
- Inchoate Offenses: Citing the inchoate statute instead of the statute for the substantive offense does not give sufficient information as to why the person is being convicted. In this situation, indicate the *substantive* statute in the A.C.A. Number of Offense/Name of Offense section of the Order and check the appropriate box identifying the inchoate offense committed.
- Defendant Sentence: An Imposed Sentence is when a person is sentenced to incarceration in an ADC facility, the ACC via judicial transfer, or county jail.
 - Probation/SIS Plus: Do not use the space for the Imposed Sentence to indicate incarceration time for a sentence of probation plus a period of confinement. Use the blanks to the right of "Defendant Sentence" to indicate if probation or SIS is accompanied by a period of confinement. Then state time in days or months. Indicate where the defendant should be confined in the conditions of probation and/or the "Additional Information" section of the Order.
 - County Jail & Misdemeanor Offenses: An imposed sentence to days in county jail should only be indicated in the "Defendant Sentence" section when sentencing the Defendant for a misdemeanor offense. ADC time should not be an imposed sentence for a misdemeanor. If ADC time is indicated, the form will be returned for corrections. See A.C.A. § 5-4-402 for a further explanation on place of incarceration.

- SIS: Do not include time for SIS in the “Imposed” blank. For example, a 10 year sentence with 5 years suspended and 5 years to serve would be listed as Imposed ADC = 60 months, SIS = 60 months, and total time to serve = 60 months.
- Victim Information: This section collects demographic information on age, gender, race and ethnicity for the Defendant and victim(s). If there is no victim or if the victim is a business, check not applicable (N/A). Indicate if the offense involved multiple victims. If there is only one victim per offense, enter the victim information with the offense. If there are multiple victims on one offense, enter the information on the Additional Victim Information page of the Order.
- Departure Information: If the sentence is a departure, all information must be completed. Please enter information for ALL offenses appearing on the Order. No departure information is required when: (1) the sentence given is a presumptive sentence; (2) the sentence is recommended by a jury; (3) the sentence is a result of a probation/SIS revocation; or (4) the offense is not a felony. A durational departure occurs when the imposed months are higher or lower than the presumptive ADC time. If the departure is durational, indicate the number of months above or below the presumptive sentence. A dispositional departure occurs when the type of sanction given (AS/CCC/ADC) is not listed as an option for the presumptive sentence.
- Concurrent/Consecutive: This section appears with each offense. It is for identifying whether the sentence will run consecutive or concurrent with other offenses on the same Order or with sentences from another case. If the sentence is complicated and the boxes cannot accurately reflect the Defendant’s sentence, use the “Additional Information” section of the Order to indicate how the sentences will run.
- Special Conditions - DNA Sample/Qualifying Offense: If a defendant has been adjudicated guilty of a qualifying or repeat offense, as defined in A.C.A. § 12-12-1103(9), a DNA sample must be collected. Unless a DNA profile already exists, the Defendant must pay a \$250 fee and have a DNA sample drawn. The Order must reflect the \$250 fee. If you are unsure if the Defendant has had a sample drawn previously, check the “Other” box and write “unless previously provided” in the blank, or explain further in the “Additional Information” section.
- Total Time to Be Served: Only enter a number in this space for a sentence to the ADC or an ACC facility via judicial transfer. This section is necessary in determining how long the offender is to be held. It is especially important to avoid problems when additional suspended sentences are imposed, multiple counts or cases are run consecutively, or there is an additional term of incarceration due to an enhancement.
- Defendant Assignment: Indicate where the Defendant is *initially* assigned. Only choose one. For example, if an offender is sentenced to probation plus confinement in county jail, the Defendant’s assignment is probation, not county jail. Indicate where the defendant should be confined in the conditions of probation and/or the “Additional Information” section of the Order.

- Drug Court Program: Indicate if the Defendant has ever previously failed a drug court program. This includes if the sentence on the current Order is the result of failing a drug court program.
- Delivery of Defendant: This information tells the county sheriff what to do with the defendant after a conviction is entered. Mark only one choice. If the defendant is sentenced to a term of incarceration to county jail as a result of a condition of probation or a conviction of a misdemeanor offense, mark “take custody for referral to county jail.” If the defendant is sentenced to the Department of Correction to be judicially transferred to CCC, or if the defendant is sentenced to a term of incarceration in an ACC facility as a condition of probation and *is not* allowed to be released on probation prior to completing this condition, mark “take custody for referral to CCC.” If the defendant is sentenced to a term of incarceration in a Department of Correction unit, mark “transport to ADC.”
- Report Date to Probation Officer: Use this space only if your jurisdiction allows a defendant who has been given a term of incarceration in an ACC facility as a condition of probation *and* your jurisdiction allows the defendant to be released from custody while awaiting bed space in CCC.
- Parole Revocations: Parole revocations are processed through the Arkansas Parole Board (Parole Board). Therefore, these should not appear on the Order.

Arkansas Sentencing Commission Report

Act 570 of 2011 required the Commission to report annually on compliance with the guidelines. See “Arkansas Sentencing Commission Annual Reports” under topic 15 for more information. Therefore, the following information *must* appear on the Order:

- Criminal History Score: The criminal history score represents the horizontal axis of the Sentencing Standards Grid (the Grid). Missing or inaccurate criminal history scores could cause perceived disparities in sentencing. A copy of the Criminal History Worksheet and instructions for completing the worksheet is available online at <http://www.arkansas.gov/asc/forms.html>. See A.C.A. § 16-90-803(b)(2).
- Seriousness Level: The seriousness level represents the vertical axis of the Grid. It determines the transfer eligibility of an offense, except in the case of a statutory override.
- Presumptive Sentence: The presumptive sentence for an offense may be found on the Grid where the criminal history score and the seriousness level axes intersect. All available sanctions for an offense are listed in the cell where the two intersect and must be listed on the Order. Although the seriousness level must be entered for probation revocations, the sentencing guidelines do not apply to those proceedings. Therefore, the presumptive sentence information is not required for revocations. See A.C.A. § 16-90-803.

What information is required to be on the Order or the offender will not be accepted by ADC/ACC?

The Sentencing Order provides correctional departments with the legal authority for taking custody of an offender. Therefore, it is critical that the information on the Order is accurate. A copy of a completed, signed Order must be sent to ADC before the offender can be placed on the waiting list. ADC checks the Orders for accuracy. Omissions or inaccuracies must be corrected before the ADC can take custody of an offender.

- For offenders sentenced to the ADC, the following basic information is required on the Order: Defendant's name, date of birth, gender, race and ethnicity, the name and A.C.A. provision of each offense, the seriousness level of each offense, the length of sentence for each offense, the total time to be served for all offenses, the case number, and the court that sentenced the offender.
- For offenders sentenced to an ACC facility, the same basic information is required to be on the Order. Additionally, offenders must have been convicted of a target offense and have no prior violent or sexual offenses in their history. If contacted prior to sentencing, ACC officials within each jurisdiction may offer assistance in determining the eligibility of an offender. If the local officials cannot make a determination, the ACC Court Referral Coordinator may be reached by telephone at 1-501-682-9563.
- The number entered as an offender's total time to serve *must* equal the amount of time an offender is sentenced to the ADC or to the ACC via judicial transfer for each offense. When calculating total time to serve, always consider enhancements and concurrent/consecutive sentencing.

How are inchoate offenses handled on the Order?

Attempt, solicitation, or conspiracy to commit a substantive crime is ranked one seriousness level below the ranking of the substantive offense. See A.C.A. § 16-90-803(b)(1)(E). Therefore, the inchoate offense will have a different (lower) presumptive sentence than the substantive crime. For substantive crimes with a seriousness ranking just above the Transfer Eligibility Line, an offender who commits an inchoate offense will be eligible for release earlier because his or her crime will fall below the Transfer Eligibility Line.

For statutory classification purposes, an inchoate crime is classified one level below the substantive offense, i.e. a Class B felony would become a Class C felony. See A.C.A. §§ 5-3-201, 301, and 404. This reduction in felony class may be significant for eligibility for admission to a Community Correction Center (CCC). For example, a Class Y felony controlled substance offense is not a target offense, whereas Class A and B felony controlled substance offenses are in the target offense group. See A.C.A. § 16-93-1202(10)(A).

Please note: With the exception of capital murder, inchoate offenses are not listed on the Seriousness Reference Table. Since capital murder is statutorily exempt from the sentencing guidelines, the related inchoate offenses *are* specifically ranked.

Habitual Offender

Habitual offender status subjects the Defendant to an extended statutory range of punishment. Therefore, this must specifically be noted on the Order to inform ADC of the applicability of the statute. See A.C.A. § 5-4-501.

2. DEPARTURE FROM THE SENTENCING STANDARDS GRID

When do I need a departure reason?

The Order must include information on *any* departure from the sentencing guidelines on placement and sentence length, the number of months above or below the presumptive sentence, and justification for the departure. See A.C.A. § 16-90-802(d)(11).

Where do I put the departure reason(s) and what information is required?

There is a section located near the end of *each* offense to indicate whether a sentence is a departure. Indicate *either* an Aggravating Departure Reason *or* a Mitigating Departure Reason, but *never both* for the same offense. If the sentence is higher than the presumptive sentence, indicate the Aggravating Departure Reason number. If the sentence is lower than the presumptive sentence, indicate the Mitigating Departure Reason number. Also, indicate if the sentence departure is durational or dispositional. If the departure is durational, indicate the number of months above or below the presumptive sentence.

What is the difference between a durational and dispositional departure?

A durational departure occurs when the imposed months are higher or lower than the presumptive ADC time. A dispositional departure occurs when the type of sanction given (AS, CCC, or ADC) is not listed as an option for the presumptive sentence.

When is a departure reason unnecessary?

The following are common examples of when a departure reason is unnecessary:

- When the imposed sentence does not depart from the presumptive sentence;
- When the imposed sentence is the result of a probation/SIS revocation proceeding (See A.C.A. § 16-90-803(a)(1)(B));
- When a jury has recommended a sentence to the trial judge (See A.C.A. § 16-90-803(b)(4));
- Felony DWI/BWI (See discussion below);
- Capital murder (See A.C.A. § 16-90-803(b)(5)); and
- When the offense is nolle prossed or dismissed.

Felony DWI/BWI

The Commission recognized that the mandatory prison sentences for felony DWI/BWI 4, ranked at a level 3, DWI/BWI 5, ranked at a level 4, and DWI/BWI 6, ranked at a level 6, are above the presumptive sentence. The Grid does not recommend penitentiary time in the first two criminal history columns (score of 0 or 1) for DWI/BWI 4. For DWI/BWI 5 and 6, while penitentiary time

is recommended when the offender has a lower criminal history score, the recommended time is below the mandatory prison sentence set out in the statute. The Commission recognized these exceptions and does not require a departure reason for either of these.

What happens when there is a statutory override?

The statutory minimum or maximum ranges for a particular crime shall govern over a presumptive sentence if the presumptive sentence should fall below or above such ranges. See A.C.A. § 16-90-803(b)(3)(C). With the exception of DWI/BWI, a departure reason should be given for a statutory override that differs from the presumptive sentence. Please note: Aggravating departure reason number thirteen is “Statutory minimum sentence overrides the presumptive sentence.”

3. COMMUNITY PUNISHMENT ACT: ACT 531 OF 1993, A.C.A. §§ 16-93-1201 – 16-93-1210

Applicability

Act 531 created the Arkansas Department of Community Correction (ACC), which oversees three major areas: probation, parole, and the Community Correction Centers. This Act also provides that an offender who has been convicted of a target group offense may have his or her record sealed. For every offender sentenced under Act 531, the sentencing court shall issue a written order or commitment, whichever is appropriate. See A.C.A. § 16-93-1207 for further information on contents of the order.

How many times may a person be sentenced to ACC for a target offense?

In the application of this Act to probation or admission to a CCC, there are no statutory restrictions on the number of times an offender may access one of these provisions.

How many times may a person seal records under Act 531?

For record sealing purposes, A.C.A. § 16-93-1207(b)(1) places the following restrictions on the use of Act 531: the current offense must be a target offense; the offender must successfully complete probation, a commitment to the ADC with judicial transfer to the ACC, or a commitment to a county jail for one of the designated target offenses; and the offender has no more than one (1) previous felony conviction and that previous felony conviction was not one of the specified offenses (i.e., a capital offense, murder in the first or second degree, first degree rape, kidnapping, aggravated robbery, or delivering controlled substances to a minor as prohibited in the former A.C.A. § 5-64-410).

Target group offenses

Offenses designated as “target offenses” are defined in A.C.A. § 16-93-1202(10)(A). Generally, these offenses are non-violent and non-sexual felony offenses. Misdemeanor offenses may also fall within the target group with two exceptions: a misdemeanor offense requiring registration as a sex offender or misdemeanor DWI. Please Note: Target offense designations

are made to be helpful, but are **ADVISORY ONLY**. Please refer to A.C.A. §§ 16-93-1201 et seq. for legal definitions.

ACC & Community Correction Centers

ACC is responsible for overseeing probation, parole, and the Community Correction Centers (CCC). ACC operates these centers, which were formerly known as Regional Correctional Facilities (RCF). These centers offer structure, supervision, surveillance, drug/alcohol treatment, education and vocational programs, employment counseling, socialization and life skills programs, community work transition and/or forms of treatment and programs. For general information, contact 1-501-682-9510 or www.dcc.arkansas.gov. For information concerning admittance to a CCC or whether a particular offense qualifies as a target offense, contact the Court Referral Coordinator at 1-501-682-9563.

4. PROBATION/SIS

Probation/SIS Plus

Probation/SIS Plus is when an offender is sentenced to probation or SIS with a period of confinement as a condition of the probation. If an offender is confined in an ACC facility, the maximum period of confinement is 12 months. If an offender is confined in a county jail, city jail, or other authorized local detention, correctional, or rehabilitative facility, the maximum period of confinement is 120 days. See A.C.A. § 5-4-304.

ADC & Probation

An offender may not be sentenced to a term of imprisonment to be followed by a period of probation. However, a court has the authority to sentence an offender to a term of imprisonment to be followed by a period of SIS. See commentary to A.C.A. § 5-4-104.

Crimes for which Probation or SIS is prohibited

A.C.A. § 5-4-104(e)(1)(A) states that the court shall not suspend imposition of sentence as to a term of imprisonment nor place the defendant on probation for the following offenses: (1) Capital murder, § 5-10-101; (ii) Treason, § 5-51-201; (iii) a Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section; (iv) Driving or boating while intoxicated, § 5-65-103; (v) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section; or (vi) Engaging in a continuing criminal enterprise, § 5-64-405.

Can Class Y drug offenders receive probation?

Much confusion has arisen in the interpretation of A.C.A. § 5-4-104(e)(1), Authorized sentences generally, and A.C.A § 5-4-301(a)(1), Crimes for which suspension or probation is prohibited, as they relate to whether Class Y drug offenders may receive suspension or probation. Act 192 of 1993 amended both provisions to permit suspension and probation as alternative sentences for Class Y drug offenses. See *Vanesch v. State*, 343 Ark.381 (2001), *Buckley v. State*, 341 Ark.

864 (2000), *Elders v. State*, 321 Ark. 60 (1995), *State v. Williams*, 315 Ark. 464 (1994), *State v. Galyean*, 315 Ark. 699 (1994), *State v. Whale*, 314 Ark. 576 (1993). Please note: A habitual Class Y drug offender shall not be placed on probation. See discussion of A.C.A. § 5-4-301(a)(2) and *State v. Joslin*, 364 Ark. 545 (2006) below.

Can a habitual offender receive probation?

A.C.A. § 5-4-301(a)(2) specifically prohibits a habitual offender, as determined by A.C.A. § 5-4-502, from being placed on probation or suspended imposition of sentence. See *State v. Joslin*, 364 Ark. 545 (2006).

5. JUDICIAL TRANSFER V. PROBATION/SIS PLUS: WHAT IS THE DIFFERENCE?

Judicial Transfer

- An offender is sentenced to ADC but transferred via court order (the Sentencing Order) to serve his/her sentence at an ACC center.
- Jurisdiction cedes to ADC upon sentencing.
- If an offender receives a 48 month sentence and receives day for day meritorious good time, he/she will serve 24 months, which is the maximum an offender can serve in an ACC center.
- If an offender becomes ineligible to remain in an ACC facility, he/she is transferred to an ADC facility via an administrative hearing through the Arkansas Parole Board. If the reason for transfer is due to disciplinary reasons, transfer eligibility remains the same as if in ACC (1/2 of the sentence). If the reason for transfer is due to administrative reasons, transfer eligibility is the same as if originally sentenced to ADC (1/3 or 1/2 less good time).
- The release authority is the Arkansas Parole Board. Pursuant to A.C.A. § 12-12-127(c), offenders sentenced via judicial transfer are eligible for parole after serving a minimum of 270 days incarceration and successful completion of the therapeutic program.

Probation/SIS Plus

- Probation/SIS Plus is when an offender is sentenced to probation or SIS with a period of confinement as a condition of the probation.
- Jurisdiction remains with the Sentencing Court.
- Maximum time of confinement in an ACC facility is 365 days with no good time credits awarded. See A.C.A. § 5-4-304.
- If an offender becomes ineligible for confinement in an ACC facility, he/she is returned to the Sentencing Court for re-sentencing, which could include possible probation revocation.
- The release authority is the Sentencing Court. ACC regularly reports to the courts on the offender's progress and the court has the option to amend the length of the incarceration time.

6. ARKANSAS PAROLE BOARD

The Arkansas Parole Board (the Board) is the release authority for persons convicted of discretionary felony offenses and sentenced to a term of incarceration in the ADC. Parole eligibility procedures and standards of review are codified at A.C.A. §§ 16-93-615 through 16-93-619. The Board refers to the Prosecutor's Short Report for information on a case. Any information is helpful in making the decision to grant parole. Therefore, please include any information about the case, such as the facts of the crime and/or a brief history of an offender's opportunities at probation.

Victim input is an important part of the parole process. Act 608 of 2015 amended A.C.A. § 16-90-1113, Consideration and release of a victim impact statement during an inmate's parole determination. For information on victim input, call the Board's Victim Input Coordinator at 1-501-682-3850 or visit the Frequently Asked Questions Section on the Board's website at: <http://paroleboard.arkansas.gov/Pages/default.aspx>.

Under A.C.A. § 16-93-204, the Parole Board has the authority to assist the Governor in exercising his authority in granting reprieves, commutations, and pardons, and shall perform such other services as may be required by the Governor in exercising his powers of executive clemency.

7. PARDONS, CLEMENCY, AND FIREARMS

Pardons and Clemency

The granting of a pardon or clemency is a power given to the Governor of the State. Instructions for filing a request for a pardon or clemency may be found on the Parole Board's web site at: <http://paroleboard.arkansas.gov/Clemency/Pages/default.aspx>.

If an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application related to the same offense for a period of six years from the date of denial or eight years from the date of the denial if the applicant is serving a sentence of life without parole for capital murder, § 5-10-101. See A.C.A. § 16-93-207(d)(1).

Firearms

No person shall possess a firearm who has been convicted of a felony. (A.C.A. § 5-73-103(a)(1)). A sealed record of a conviction may serve as the basis for a conviction under this statute if the offense was committed after March 12, 1995. See *Act 595 of 1995*; see also *Attorney General's Op. 2002-173*. Act 1491 of 2009 amended A.C.A. § 5-73-103(b)(2) and provided that if a person has their record sealed under the First Offender Act or Drug Court Act, the same does not qualify as a conviction for purposes of the felon in possession of a firearm statute.

The Governor may restore the right of a convicted felon or adjudicated delinquent to own and possess a firearm with a pardon expressly restoring the right or without a pardon under certain circumstances. (A.C.A. § 5-73-103(d)). For more information on firearm restoration, please see the last page of the pardon application.

8. RELEASE

Four Levels of Release Eligibility

One of the duties of the Commission is to establish transfer eligibility for offenses. The Commission has set the transfer eligibility line between seriousness levels six and seven. Offenders sentenced to a term of incarceration for offenses *above* the line must serve one-half of their sentence before they are eligible for transfer. Offenders sentenced for offenses *below* the line must serve one-third of their sentence before they are eligible for transfer. Also, there are two statutory overrides which affect transfer eligibility. The four levels of transfer eligibility are listed below.

- One-Half: A person sentenced to ADC for a felony ranked in seriousness levels seven through ten on the Seriousness Reference Table will become eligible for transfer to community supervision after serving one-half (1/2) of his or her sentence with credit for meritorious good time. For example, a person receiving a seventy-two (72) month sentence with optimal meritorious good time credits will be eligible for transfer to community supervision in eighteen (18) months.
- One-Third: A person sentenced to ADC for a felony ranked in seriousness levels one through six on the Seriousness Reference Table will become eligible for transfer to community supervision after serving one-third (1/3) of his or her sentence with credit for meritorious good time. For example, a person receiving a seventy-two (72) month sentence with optimal meritorious good time credits will be eligible for transfer to community supervision in twelve (12) months.
- 100% Time Served – Statutory Override: Any person who commits a violent felony offense or any felony sex offense subsequent to August 13, 2001, and who has previously been found guilty of or pleaded guilty or nolo contendere to any violent felony offense or any felony sex offense shall not be eligible for release on parole by the Parole Board. For purposes of this section, a violent felony offense or any felony sex offense means those offenses listed in A.C.A. § 5-4-501(d)(2). In other words, an offender who is guilty of a violent or sexual felony offense must serve 100% of their time if this is their second or subsequent violent or sexual offense. For example, an inmate sentenced to a five year sentence must serve five years or a forty year sentence must serve forty years. See A.C.A. § 16-93-609 (Act 1805 of 2001). When an offender has been committed to the ADC for a violent or sexual felony offense, ADC personnel run a criminal background check. After verifying that he or she has a previous conviction which falls under A.C.A. § 5-4-501(d)(2), ADC will automatically set their time to serve at 100%. Since this is an eligibility issue and not a sentence enhancement, it does not have to be alleged on the Criminal Information or noted on the Order.

Act 895 of 2015, The Criminal Justice Reform Act of 2015, added § 5-39-201, Residential burglary and its inchoate versions, to the offenses listed in A.C.A. § 5-4-501(d)(2) which are applicable to 100% transfer eligibility.

- **70% Parole Eligibility – Statutory Override:** For certain offenses, offenders are required to serve 70% of their sentence before reaching transfer eligibility. These offenses are: Murder in the first degree, § 5-10-102; Kidnapping, Felony Class Y, § 5-11-102; Aggravated robbery, § 5-12-103; Rape, § 5-14-103; Trafficking of Persons, § 5-18-103; Causing a catastrophe, § 5-38-202; Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401; Trafficking methamphetamine, § 5-64-440(b)(1); or Possession of drug paraphernalia with the purpose to manufacture methamphetamine, the former § 5-64-403(c)(5). Attempt, conspiracy, or solicitation to commit one of these offenses is *not* subject to 70% parole eligibility.

Please note: Act 570 of 2011 removed Possession of drug paraphernalia with the purpose to manufacture methamphetamine, now codified at A.C.A. § 5-64-443(b), from 70% parole eligibility. Offenders sentenced under the former § 5-64-403(c)(5) are *still* subject to 70% parole eligibility. Only the methamphetamine offenses are subject to meritorious good time credits. However, in no event shall the time served by any person who is found guilty of or pleads guilty or nolo contendere to one of these methamphetamine offenses be reduced to less than 50% of the person's sentence. ADC time computation cards will still reflect 70% transfer eligibility status, but the transfer eligibility date will be calculated on the *projected* earned good time. Offenders sentenced to CCC via judicial transfer for drug related crimes that are target offenses are still subject to 70% parole eligibility with good time that will not reduce time served to less than 50% of their original sentence. See A.C.A. § 16-93-618 and the former A.C.A. § 16-93-611.

How is release eligibility affected by enhanced sentences or habitual offender status?

- **Enhancements:** Release eligibility for sentence enhancements is generally determined by the specific code provision defining the enhancement. Unless otherwise noted in the specific enhancement statute, the percentage of time served shall be calculated the same as the underlying offense. Enhancements on underlying offenses above the transfer eligibility line would serve one-half (1/2) less good time. Enhancements on underlying offenses below the transfer eligibility line would serve one-third (1/3) less good time. For convictions subject to a statutory override, transfer eligibility of the enhancement portion of the sentence will be the same as the underlying offense.
- **Habitual Offender Status:** The “two and three strikes” sections of the habitual offender statute, codified at A.C.A. §§ 5-4-501 (c) and (d) respectively, must also be specifically noted on commitments for the ADC to be aware of their applicability. A.C.A. § 16-93-615(h) states that an inmate who is sentenced under these provisions for a serious violent felony or a felony involving violence may be considered eligible for parole or for community correction transfer upon reaching regular parole or transfer eligibility, *but only* after reaching a minimum age of fifty-five (55) years.

When an Offender is a Detriment to the Community

The Parole Board may deny parole to any otherwise eligible person, regardless of the sentence that he or she is serving, if five (5) members of the Board determine that the person upon release would be a detriment to the community into which the person would be released. Detriment to the community is defined in A.C.A. § 16-93-101(12).

Early Release

Offenders are generally kept until their transfer eligibility date. There are some exceptions that may allow for early release, including:

- Prison Overcrowding Emergency Powers Act (EPA): The EPA is codified at A.C.A. §§ 12-28-601 et seq. The Board of Corrections may declare a prison overcrowding state of emergency in two situations. First, they may declare an emergency whenever the population of the prison system exceeds 98% of the rated capacity for thirty (30) consecutive days. In this case, inmates who meet the criteria set out in the statute may have their incarceration time shortened by no more than three months. Second, they may declare an emergency whenever the number of inmates on the county jail backlog exceeds 500 inmates. In this case, inmates who have been incarcerated for a nonviolent offense and have served a minimum of six months in an ADC facility may have their transfer eligibility date moved up one year. Criteria for release eligibility may be found at A.C.A. § 12-28-604.
- Arkansas Boot Camp Act: The Arkansas Boot Camp Act is codified at A.C.A. §§ 12-28-701 et seq. Boot Camp is an ADC program, not a sentencing alternative. Eligibility is determined both by statute and ADC programming requirements. Offenders may be eligible for early release upon completion of the program. Questions concerning this program should be directed to the ADC Boot Camp Coordinator at 1-870-267-6999.
- Parole Alternative for Terminally Ill or Permanently Incapacitated Inmates: Act 570 of 2011 modified A.C.A. § 16-93-708, Parole alternative – Home detention. This provision allows terminally ill or permanently incapacitated inmates to be considered for transfer to parole supervision.
- Parole Alternatives for Electronic Monitoring of Parolees (120 days): A.C.A. § 16-93-711 allows certain inmates to be released on electronic monitoring after serving 120 days in an ADC facility. The Board of Corrections is responsible for promulgating rules that will establish policy and procedures for implementation of the electronic monitoring program. Questions concerning this program should be directed to the Board of Corrections at 1-870-267-6754.

9. DNA DETECTION

Act 543 of 2015 requires that a DNA Sample be collected from a person arrested for any felony offense.

10. SEX OFFENDERS

The following Acts relating to sex offenders were passed during the 90th General Assembly. For specific questions concerning sex offender registration or restrictions, please contact the Arkansas Crime Information Center (ACIC) at 1-501-682-2222, or visit their website at <http://www.acic.org/>.

- **Act 293 of 2015:** Amends voyeurism and video voyeurism laws to include courses of conduct involving unmanned vehicles. See A.C.A. §§ 5-16-101 and 5-16-102.
- **Act 304 of 2015:** Creates a Class A misdemeanor for distribution of sexual images to embarrass a household member or significant other. See A.C.A. §§ 5-26-302 and 5-26-314.
- **Act 357 of 2015:** Adds trafficking of persons and patronizing a victim of human trafficking to definition of “sex offense.” See A.C.A. § 12-12-903(12)(A)(i).
- **Act 358 of 2015:** Makes various technical corrections. Adds verification/registration procedures for registered sex offenders classified as homeless, and for other purposes. See A.C.A. §§ 12-12-904, 12-12-906, 12-12-907, and 12-12-912.
- **Act 376 of 2015:** Amends the provision concerning registered offenders living near schools, public parks, youth centers, or daycares, by adding an additional restriction for Level 4 offenders. A sex offender who is required to register and has been assessed as a level 4 offender may not knowingly reside within 2000’ of a church or other place of worship. See A.C.A. § 5-14-128.
- **Act 608 of 2015:** Allows victim impact statements to be given via video conference. Creates exceptions to the requirement that the inmate be given a copy of the victim impact statement in cases of sex offenses. See A.C.A. § 16-90-1113.
- **Act 973 of 2015:** Allows for extended supervision of certain sex offenders following a petition by the prosecuting attorney alleging that the sex offender is a serious risk to the public and likely to commit additional criminal offenses. The initial supervision period of 15 years can be renewed and extended at any time with a new hearing. After five years from the date of the original order, the supervised offender may petition to be relieved of supervision. See A.C.A. § 5-4-107.
- **Act 1080 of 2015:** Expands the conduct which constitutes trafficking of persons to include advertising an activity that is considered human trafficking or selling travel services that include or facilitate human trafficking. See A.C.A. § 5-18-103.
- **Act 1138 of 2015:** Amends various provisions relating to the Child Welfare Agency Listing Act; specifically, the Act amends the definition of “child placement agency” and “child welfare agency.” Provides that law enforcement agencies must adopt a policy for completing and signing non-immigrant visa certification forms for human trafficking victims. The forms shall be completed no later than 30 days after receipt of the request for certification. Requires training to educate judges (by the Administrative Office of the Courts), prosecutors (by the Prosecutor Coordinator’s Office) and circuit clerks (by the Arkansas Circuit Clerks Association) regarding the fines dedicated to the Safe Harbor

Fund for Sexually Exploited Children under §§ 5-18-103(d), 5-70-102(d), and 5-70-103(d). Additionally, the Act amends various provisions relating to the Arkansas Child Abuse/Rape/Domestic Violence Commission as it relates to Human Trafficking. See A.C.A. §§ 9-28-402, 12-19-104, 16-92-119, 20-82-201, 20-82-206, and 20-82-209.)

- **Act 1285 of 2015:** Amends the provisions under the Sex Offender Registration Act of 1997 concerning the offenses that are considered a sex offense, specifically the offense of Permitting abuse of a minor, A.C.A. § 5-27-221. A person who permits abuse of a minor shall be required to register as a sex offender if the abuse consisted of sexual intercourse, deviant sexual activity, or sexual conduct. The Act also provides that a person previously required to register for a conviction of permitting the physical abuse of a minor under A.C.A. § 5-27-221 to apply for termination of the requirement to register upon the effective date of this act. See A.C.A. § 12-12-903 and 12-12-919.

11. EXTENDED JUVENILE JURISDICTION (EJJ): Codified at A.C.A. §§ 9-27-501 Et Seq.

The State may request an EJJ designation in a delinquency petition under the following circumstances:

- If a juvenile under the age of 13 at the time of the alleged offense was charged with capital murder, or murder in the first degree and the state has overcome presumptions of lack of fitness and lack of capacity.
- If a juvenile is 13 years of age at the time of the alleged offense and is charged with capital murder, or murder in the first degree. However, juveniles at age 13 at the time of the alleged offense shall have an evaluation pursuant to A.C.A. § 9-27-502, and the burden shifts to the juvenile to establish lack of fitness to proceed or lack of capacity.
- If a juvenile is 14 to 17 years of age at the time of the alleged offense and was charged with one of the crimes listed in A.C.A. §§ 9-27-318(b)(1) and (c)(2).

Pursuant to A.C.A. § 9-27-506, if a juvenile is found delinquent as an EJJ offender, the circuit court shall have the following dispositions: (1) Order any of the juvenile dispositions authorized by A.C.A. § 9-27-330, and (2) Suspend the imposition of an adult sentence pending court review. This statute provides for the state to petition the court to determine by a preponderance of the evidence that a juvenile designated as an extended juvenile jurisdiction offender has violated a juvenile disposition order, has been found delinquent or guilty of committing a new offense, or is not amenable to rehabilitation in the juvenile system. This allows the court to 1) amend or add any juvenile disposition authorized by A.C.A. § 9-27-330; 2) exercise its discretion to impose the full range of adult sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment. This statute also contains language regarding credit for time served at A.C.A. § 9-27-330 (b)(2)(C). A.C.A. § 9-27-330 (b)(2)(A)(ii) also states that a sentence of imprisonment shall not exceed forty (40)

years except for juveniles adjudicated for capital murder or first degree murder who may receive sentences up to life with the possibility of parole.

A juvenile who has received an adult sentence to the Arkansas Department of Correction (ADC) shall not be transported to ADC until the juvenile is 16 years of age. The juvenile shall be housed by the Division of Youth Services of the Department of Human Services until he/she reaches sixteen (16) years of age. At the age of sixteen (16), the juvenile shall be transferred to ADC.

Juveniles sentenced pursuant to EJJ are subject to parole as any other inmate within the ADC. Juveniles adjudicated for capital murder or murder in the first degree are also subject to parole. Juveniles will be given credit for time served in a juvenile detention or juvenile facility against any adult sentence.

For additional information, please see the Arkansas Circuit Courts Judges Benchbook, Juvenile Division, found at: <https://courts.arkansas.gov/administration/education/publications>.

12. SEALING OF RECORDS

Act 1460 of 2013 established The Comprehensive Criminal Record Sealing Act. The purpose of Act 1460 is to amend, consolidate, clarify, and simplify the process for sealing a person's criminal record under certain circumstances. Act 1460 is codified at A.C.A. §§ 16-90-1401 – 1419. The effective date of the new law was January 1, 2014.

The practical effect of this Act is that it has repealed many of the current Arkansas Code provisions that deal with Sealing or Expungement and either moved them to the new code provision or deleted them altogether. Other code provisions were amended to either refer to this new Act or eliminate the word "expungement." All records are now referred to as being "Sealed."

The law does not apply to the following:

- The Arkansas Drug Court Act A.C.A. §§ 16-98-301, et seq.,
- Extended juvenile jurisdiction records under A.C.A. § 9-27-508 unless the records are considered adult criminal records, or
- The sealing of juvenile records.

The Community Punishment Act, Act 531, and the First Offender Act, Act 346, were not substantially changed by this law except for deleting references to the word "expungement." Act 531 is codified at A.C.A. §§ 16-93-1201, et seq. Act 346 is codified at A.C.A. §§ 16-93-301, et seq.

All forms relating to the sealing of criminal records are available on the Arkansas Crime Information Center's website at www.acic.org. For specific questions concerning the sealing of criminal records, please contact ACIC at 1-501-682-2222 or visit their website.

13. VICTIMS' RIGHTS

The Arkansas Victim Information and Notification Everyday Program (VINE) is administered by the ACIC. VINE was created to allow agencies to notify victims reliably and efficiently with vital information on offenders and inmate custody status changes 24 hours a day, 365 days a year. To register for notification, a victim may call 1-800-510-0415 or visit the website at www.vinelink.com. See A.C.A. § 12-12-1201.

The Crime Victims Reparation Program is administered by the Arkansas Office of the Attorney General. Victims can receive help with medical bills, rehabilitation costs, dental expenses and other expenses they may incur as a result of a crime. For more information contact the Office of the Attorney General, Arkansas Crime Victims Reparations Program at 1-501-682-1020 or 1-800-448-3014, or email Crimevictims@ArkansasAG.gov See A.C.A. §§ 16-90-701 et seq.

14. SENTENCING CHANGES

2015 Changes to the Seriousness Reference Table

The new seriousness rankings have been incorporated in the Seriousness Reference Table section of this manual. You may also find information concerning sentencing guidelines on our website at <http://www.arkansas.gov/asc/>.

15. MORE SENTENCING INFORMATION

Arkansas Sentencing Commission Training

The Commission is required to conduct annual training regarding the sentencing guidelines, pursuant to A.C.A. § 16-90-802(d)(10). Additional trainings cover a variety of topics, including but not limited to, how to complete court forms, the sealing of records, legal ethics for criminal attorneys, and segments relating to the Department of Community Correction, the Department of Correction, and the Arkansas Parole Board. Notification of training schedules will be published as they become available.

Arkansas Sentencing Commission Annual Reports

Act 570 of 2011 requires the Commission to produce annual reports regarding compliance with sentencing guidelines, including the application of voluntary presumptive standards, and departures from the standards. The report must include data collected from each county, and a county-by-county and statewide accounting of sentences to ADC and DCC, the average

sentence length for sentences by offense type and severity level, and the percentage of sentences that are an upward departure from the sentencing guidelines. For sentences that are an upward departure from the sentencing guidelines, the report must include the average number of months above the recommended sentence. See A.C.A. § 16-90-802(d)(9).

More questions?

Contact us at 1-501-682-5001 or visit our website at <http://www.arkansas.gov/asc>.