92nd General Assembly

signed into law

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decARcerate
Education. Legislation. Advocacy.

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I. CHECKS AND SCREENINGS

Studies show that when individuals who were formerly incarcerated have easier access to jobs—and thus fewer barriers to reentry—they are less likely to return to prison. But, in most cases, the state of Arkansas denies licensure for individuals with criminal records. Considering the fact that more than one-quarter of occupations in the United States require a state license[1], this is particularly alarming. While background checks may be justified in certain instances, they can often place an undue burden on those who were once incarcerated and create collateral consequences for returning citizens.

Occupations That Require Checks & Screenings

Act 314 (HB1422): An Act To Require A Criminal Background Check As A Requirement For Licensure As **A Physical Therapist Or A Physical Therapist Assistant;** And For Other Purposes

Sponsored by: Representatives Boyd and Vaught; Senator K. Hammer

> This law requires an individual wishing to receive a license to become a physical therapist or physical therapist assistant to submit to a federal and state criminal background check, and be responsible to the Department of Arkansas State Police for the payment of any fee related to the criminal background check. They must also sign a release of information to the licensing board.

Act 318 (HB1277): An Act To Amend Laws Regarding Criminal Background Checks; To Require Criminal Background Checks On **Contractors Of State Agencies** For Performance Of Services In Designated Positions Or Designated Financial Or Information Technology Positions; And For Other Purposes.

Sponsored by: Representative Hawks; Senator L. Eads

> Current law requires those wishing to serve as an employee of a state agency to submit to a background check if the position for which they are applying requires them to provide care, supervision, treatment, or any other services to elderly, mentally ill or developmentally

[1] https://bit.ly/31LszFQ.

disabled individuals, or children who reside in any state-operated facility. This law requires the same of those seeking to serve as contractors and subcontractors.

Act 323 (HB1396): An Act To Allow A School District Board Of Directors To Implement A Drug Screening Requirement For An Applicant Or Current Employee Of A Public School District

Sponsored by: Representative Bentley

This law allows the board of a school district to implement a policy requiring pre-employment drug screenings[2] of individuals who apply at public districts as well as random drug screenings of current employees. If a current employee tests positive, the school district may carry out disciplinary actions including immediate dismissal of the employee, or placing the employee on temporary leave or requiring that the employee enter a drug treatment program.

Act 373 (SB296): An Act To Establish A Criminal Background Check Policy For **The Department Of Workforce Services;** To Declare An Emergency; And For Other Purposes.

Sponsored by: Senator K. Hammer; Representative Lundstrum

This law requires that a person employed by the Department of Workforce Services who may be authorized to access or view federal tax information as part of the employee's job duties to submit to a criminal background check (including the taking of fingerprints) by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation, which are to be performed at least once every ten years. Employees are also required to notify the director within twenty-four hours of an arrest for a misdemeanor or felony. Failure to do so on a second occasion may result in termination of their employment.

Other Notable Bills

Act 536 (HB1544): An Act To Amend Provisions Of The Arkansas Code Governing Background Checks For Licensed And Classified School Personnel; And For Other Purposes

Sponsored by: Representative S. Meeks; Senator J. Sturch

Currently, when applying for both licensed and unlicensed school personnel positions, a past expunged or pardoned conviction would not disqualify an individual if the offense was at least ten years old and not listed as one of forty-seven disqualifying offenses. This law adds four additional crimes to the list of disqualified offenses (the trafficking of a person, patronizing a victim of human trafficking, aggravated assault on a family or household member, and computer crimes against a minor), but also removes that ten year requirement and allows for those with sealed convictions, as well as expunged and pardoned convictions (as long as they are not for disqualifying offenses), to be considered for these positions.

[2] "Drug screening," as defined in this law, is a chemical test administered for the purpose of determining the presence or absence of a drug in an individual's blood, breath, or urine.

Act 626 (SB301): An Act To Amend Laws Concerning Criminal Background Checks For Nursing Licensure; And For Other Purposes

Sponsored by: Senator K. Hammer; Representative Boyd

This law updates the system by which background checks are done for nursing licenses. The board may now submit an applicant's fingerprints to the federal Next Generation Identification system,[3] and they could be subject to Rap Back services[4] of that system.

Act 951 (HB1433): An Act To Authorize Individuals With Prior-Drug Related Offenses To Work With Individuals Receiving Substance Abuse Treatment As Peer Support Specialists Or Similar Positions Requiring A History Of Receiving Behavioral Health Services; To Declare An Emergency; And For Other Purposes

Sponsored by: Representative Rushing

Following a background check, an individual that has pleaded guilty or nolo contendere (no contest) or been found guilty of one or more criminal offenses will (in most cases[5]) be disqualified from employment as a service provider, operator, or from employment.

However, this law creates an exception for a person with a prior drug-related offenses who is employed or being considered for a position as a peer support specialist or substance abuse counselor, assuming the only offense on their criminal background check that would disqualify them from employment does not involve violence or a sexual act. To qualify, the individual must obtain certification in peer recovery from the Arkansas Substance Abuse Certification Board after the commission of the offense.

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[3] https://bit.ly/381wS2W

[4] The Rap Back service allows authorized agencies to receive notification of activity on people who hold positions of trust or who are under supervision or investigation, thereby eliminating the need for repeated background checks on a person from the same applicant agency.

[5] A person is not excluded if the conviction or plea of guilty or no contest was for a misdemeanor offense at least five years prior to the criminal history records check or a felony offense at least ten years prior to the criminal records check. The person can not have had any other conviction or plea of guilty or no contest within that five or ten year period and must have completed their term of confinement, probation, or parole related to the conviction or plea.

II. COURTS

Some of the most severe injustices of the criminal punishment system originate and are carried out in court rooms. Most of the laws passed during the 92nd General Assembly related to procedural changes in the courts. Significant judicial redistricting redrew judicial districts and created additional judgeships.

Criminal Records Sealing

Act 57 (HB1016): An Act Concerning The Time Period Before Which A Court May Grant A Uniform Petition To Seal A Criminal Record; And For Other Purposes

Sponsored by: Representative Capp; Senator B. Ballinger

Under current law, after a person files a uniform petition to seal their criminal conviction, the prosecuting attorney has thirty days to potentially file a notice of opposition. If the notice is not filed, the court may grant the petition. If it is filed, the court may not sign the order without first holding a hearing.

Previously, the petition could not be granted by the court until 90 days had passed since the prosecuting attorney was served with the petition. However, with the passage of this law, the period is reduced to thirty days.

Act 680 (HB1831): An Act To Amend The Comprehensive Criminal Record Sealing Act Of 2013; To Provide An Easier Pathway For A Person To Seal Certain Offenses; To Announce An Intent To Study The Options Available To A Person To Have His Or Her Record Sealed; And For Other Purposes

Sponsored by: Representatives Boyd, Crawford, Richardson, and D. Whitaker; Senator M. Pitsch

Prior to the passage of this law, a person was eligible to file a uniform petition to seal their misdemeanor offense or violation sixty days after the completion of their sentence.

If the offense was a Class C or D felony, an unclassified felony, or a Class A or B felony related to controlled substances, the solicitation to commit, attempt to commit, or conspiracy to commit any of these offenses, they were to wait five years after the completion of their sentence. Filing a petition for all offenses required a fifty dollar filing fee.

This act eliminates the fee and allows a person to file a uniform petition immediately after the completion of their sentence, unless the offense is a violent Class C or Class D felony, in which case they must still wait five years.

Driving Related

Act 321 (HB1367): An Act Concerning The Sentencing Procedure For A Person Convicted Of Driving Or Boating While Intoxicated

Sponsored By: Representative Capp

Under current law, after an individual pleads guilty or nolo contendere (no contest) for driving or boating while intoxicated, the court is immediately required to request a pre-sentence screening and assessment report that will be completed by the Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services.

The report's recommendations are intended to assist the court in determining whether an individual should be referred to a state approved treatment program or receive some other type of services. The report must include: (1) the defendant's driving record; (2) an alcohol problem assessment; (3) a victim impact statement, if applicable. The Division of Aging, Adult, and Behavioral Health Services has thirty days to comply with the request.

While the court was previously not allowed to pronounce sentencing until they had received this report, this law removes that requirement.

Act 704 (SB513): An Act Concerning A Suspension Of A Person's Driver's Licenses For Possessing A Controlled Substance; And For Other Purposes

Sponsored by: Senators B. Johnson and B. Ballinger; Representative Capp

Under current law, when someone with a non-commercial driver's license pleads guilty or nolo contendere (no contest) of any drug offense, their driving privileges are suspended for six months. Those with commercial driver's licenses have their driving privileges suspended for one year. And now, because of this act, courts are allowed discretion ("compelling circumstances warranting an exception") concerning an individual's license suspension.

Juveniles

Act 329 (SB7): An Act To Allow Members Of The General Assembly To Attend Hearings Held Under The Arkansas Juvenile Code Of 1989; And For Other Purposes

Sponsored by: Senator A. Clark; Representative Sullivan

With minor exceptions[6], juvenile hearings are closed under current law.

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[6] In delinquency cases, the juvenile shall have the right to an open hearing. Additionally, as stipulated under Act 945, a Child Welfare Ombudsman is allowed to attend unless prevented by a court.

But this law allows a member of the Arkansas General Assembly to attend any hearing held under the Arkansas Juvenile Code of 1989, unless the court excludes the member based on their authority under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence or the best interest of the child.

Act 559 (SB90): An Act To Amend The Law Concerning Evidence Presented During Probable Cause Hearings Held Under The Arkansas Juvenile Code Of 1989; And For Other Purposes

Sponsored by: Senator A. Clark; Representative Capp

Currently, when deemed necessary to protect the health or physical well-being of a juvenile from immediate danger, a court must issue an emergency order on behalf of a juvenile and hold a probable cause hearing. The hearing, with the exception of issues related to custody and delivery of services, is limited to determining whether probable cause existed, or still exists, to protect the juvenile. This law limits what evidence can be presented at the hearing, if the defendant stipulates that probable cause exists, the only evidence to be presented must pertain to visitation and services delivered to the family.

Also according to this law, "a parent shall not be compelled to testify under any circumstances." And if a parent stipulates that probable cause exists, the affidavit[7] of the plaintiff[8] can be introduced.

Act 647 (HB1551): An Act To Amend The Law Concerning The Confidentiality Of Records Under The Arkansas Juvenile Code of 1989; Concerning School Notification Of Certain Offenses For Which A Minor Is Adjudicated Or Convicted; And For Other Purposes

Sponsored by: Representative Eubanks

Upon written request, under this law, a court is allowed to provide information regarding the disposition of a minor who attends a public school and has been adjudicated delinquent or convicted of a criminal offense to a school superintendent (or their designee) of the school district to which the minor transfers.

The law also requires a prosecuting attorney and an arresting agency to notify the superintendent (or their designee) of a school district of: (1) an offense involving a deadly weapon; (2) kidnapping; (3) first degree battery; (4) sexual indecency with a child; (5) first, second, third, or fourth degree sexual assault; and (6) the unlawful possession of a handgun.[9] The arresting agency must make the notice within 24 hours of the arrest or detention or before the next school day, whichever is earlier. Upon receiving the notice, the superintendent must notify the principal, a school resource officer, or any other school official with a "legitimate educational interest in the minor."

The information shall be treated as confidential information and used only for the limited purpose of obtaining services for the minor or to ensure school safety.

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[7] An affidavit is a written statement confirmed by oath or affirmation, for use as evidence in court.

[8] A plaintiff is a person who brings a case against another in a court of law.

[9] The questioning agency must make the notice within 24 hours of the arrest or detention or before the next school day, whichever is earlier.

Approved individuals[10] may meet to exchange information, discuss options for assistance to the minor, or develop and implement a plan of action to assist the minor and to ensure school safety. If a meeting is called, the minor and their parent or legal guardian must be notified within "a reasonable time before a meeting" and may attend.

Records of the arrest, detention, or investigation of, or the proceedings involving the minor are otherwise confidential and not subject to disclosure under the Freedom of Information Act unless: (1) authorized by a written order from the juvenile division of the circuit court; (2) the arrest or the proceedings result in the minor being formally charged for a felony in the criminal division of the circuit court; (3) for the purpose of obtaining services for the minor; or (4) to ensure school safety. A person who violates the confidentiality of this information may be held civilly liable.

Act 833 (HB1762): An Act To Amend The Qualifications Of A Guardian; And For Other Purposes

Sponsored by: Representatives Crawford and Boyd; Senator M. Pitsch

Previously, if a person was convicted of a felony that had not been pardoned, they were unqualified to be appointed as the guardian of a person or an incapacitated person's estate. However, this law eliminates these restrictions with some limitations.

A court must now enter written findings stating that, "notwithstanding the felony conviction," an individual is "otherwise qualified" before they can become a guardian.

If they are seeking guardianship of a minor, they must be relative or fictive kin.[11] But if the minor is subject to a dependency-neglect proceeding, an individual cannot be the guardian unless the prospective guardian's home has been opened as a foster or adoptive home.

Testimonies

Act 301 (HB1126): An Act Concerning A Victim Impact Statement In A Criminal Trial; And For Other Purposes

Sponsored by: Representative Evans; Senator B. Ballinger

This law requires a defendant to physically remain in the courtroom during the presentation of any victim impact statement, unless the court determines they are behaving in a manner that is disruptive or presents a threat to the safety of others present in the courtroom.

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[10] Approved parties include: a school counselor, a juvenile court probation officer or caseworker, a law enforcement officer, a spiritual representative designated by the minor or his or her parents or legal guardian, a Department of Human Services caseworker; a community-based provider designated by the court, the school, or the parent or legal guardian of the minor, a Department of Health representative, the minor's attorney or other court-appointed special advocate, a school superintendent or the designee of the superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

[11] "Fictive kin" is a person not related to a child by blood or marriage, but who has a strong positive emotional tie to the child and has a positive role in the child's life, such as a godparent, neighbor, or family friend.

Act 687 (SB273): An Act To Clarify That An Expert Witness Testifying Or Offering Opinions Regarding An Administrative Proceeding Before A Board Of Any Profession Or Occupation Classified Under The Law Of The State Of Arkansas As A Profession Of The Healing Arts Has Immunity; And For Other Purposes

Sponsored by: Senator Bledsoe; Representative L. Johnson

> According to current law, members of state boards related to a "healing arts" profession or occupation are not held liable in damages[12] to any person, as long as they act without malice and reasonably believe that the action or recommendation is warranted by the facts known to them.
>
> This act makes the same true for individuals speaking on behalf of boards (including expert witnesses testifying and/or offering opinions "regarding an administrative proceeding before a board of a profession or occupation classified as a profession of the healing arts.")

Redistricting

Act 614 (HB1791): An Act Concerning The Prosecuting Attorney For The Thirteenth Judicial District; And For Other Purposes

Sponsored by: Representative Barker; Senator T. Garner

> This law converts the Thirteenth Judicial District[13] from a Division B to a Division A Judicial District, which means that the district's prosecuting attorneys will no longer be allowed to engage in private law practice during their terms in office.

Act 814 (SB511): An Act Concerning The Thirtieth Judicial District; Concerning Lonoke County State District Court As It Will Be Constituted In 2021; And For Other Purposes

Sponsored by: Senator Hill; Representative Lynch

> Under this law, the Thirtieth Judicial District will be served by two state district court judges rather than one.

Act 817 (SB552): An Act Concerning The Reorganization Of Local District Courts Into State District Courts; And For Other Purposes

Sponsored by: Senator Teague

> The Thirty-Sixth Judicial District is comprised of the counties of Little River, Sevier, and Howard and has departments in Ashdown, Foreman, Winthrop, DeQueen, and Nashville. This law expands the district to include Pike county and adds two additional departments in Murfreesboro and Glenwood.

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[12] Damages for slander, libel, defamation of character, breach of any privileged communication, or any other action taken.

[13] The Thirteenth Judicial District is comprised of six departments located in Dallas, Cleveland, Ouachita, Calhoun, Bradley, Columbia, and Union.

This district will now be served by two state district court judges rather than one, and cities and counties that were previously served by local district courts will now be served by state district courts.

These changes will take effect on January 1, 2025, with the judicial elections slated for 2024.

Act 909 (HB1880): An Act Concerning The District Courts Of Independence, Fulton, And Izard Counties; And For Other Purposes.

Sponsored by: Representatives Dalby, M. Gray; Senator J. Sturch

The Fourteenth District[14] was slated to transition to state district courts in 2021. However, the law extends the transition time until January 1, 2025, and the new state district court judge will be elected in 2024.

Act 935 (SB568): An Act Concerning The Twenty-Fifth Judicial District; Concerning District Court Judges; To Declare An Emergency; And For Other Purposes

Sponsored by: Senator Caldwell; Representative Hollowell

Under this law, the Twenty-Fifth District[15] will be served by two district court judges rather than one. The additional district court judge will be elected in 2020, and take office on January 1, 2021.

Act 1003 (SB658): An Act Concerning Circuit Court Judges And The Judiciary; To Provide For Additional Circuit Judgeships For Certain Judicial Districts; To Provide For A Study Concerning The Allocation Of Circuit Judges Statewide; To Make Technical Corrections; To Declare An Emergency; And For Other Purposes

Sponsored by: Senator Hester

This law creates an additional circuit judgeship in the Second Judicial District, the Fourth Judicial District, the Twelfth Judicial District, the Nineteenth Judicial District-West and the Twenty-First Judicial District. They shall have jurisdiction in law, equity, probate, and juvenile matters. The judges for the Twelfth and Twenty-First Judicial Districts are effective immediately and will be filled by gubernatorial appointment; the remaining new judgeships are to be elected in 2020, and take office on January 1, 2021.

The House and Senate Judiciary Committee will also conduct a joint study on the composition of the judicial circuits and allocation of circuit court judgeships statewide, as well as issue recommendations concerning the reassignment of judicial circuits and the reapportionment of circuit court judgeships. Any suggested changes must be made no later than September 1, 2020 in order to be available for potential budgetary considerations during hearings of the Joint Budget Committee before the 2021 Regular Session.

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[14] The Fourteenth Judicial District is comprised of Independence, Fulton, and Izard county, with six departments in Batesville, Melbourne, Calico Rock, Horseshoe Bend, Salem, and Mammoth Spring.

[15] The Twenty-Fifth District is comprised of the counties of St. Francis and Cross and has six departments in Forrest City, Madison, Palestine, Wynne, Cherry Valley, and Parkin.

III. CORRECTIONS

In Arkansas, more than 18,000 prisoners are often held in unsanitary conditions, denied proper medical and mental health care, held in solitary confinement, and forced to work without compensation. More than 38,000 others[16] are on probation and parole. These systems of state control place burdensome restrictions on people, often making it difficult for them to succeed which contributes to funneling people back into jails and prisons.

Incarcerated Persons

Act 444 (SB116): An Act Requiring An Inmate In The Department Of Correction To First Exhaust All Available Administrative Remedies As A Condition Precedent To Filing A Claim Under The Arkansas Civil Rights Act Of 1993 Or Any Other State Law Concerning Prison Conditions; And For Other Purposes

Sponsored by: Senator B. Ballinger; Representative Capp

> This law requires incarcerated persons to exhaust all available administrative remedies before filing a lawsuit regarding prison conditions under the Arkansas Civil Rights Act of 1993.
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> According to the Arkansas Department of Correction Inmate Handbook[17], administrative remedies involve an individual firstly submitting an informal complaint, within fifteen days from the date of the incident, to a designated problem-solving staff member. The “Problem Solver” has three working days to resolve the issue, but if it cannot be resolved or the designated staff member does not respond in the given time, the individual may submit a formal complaint, within three working days. Incarcerated individuals are only allowed to submit three formal grievances each seven day period, and if they are not satisfied with the response given, the complaint can be appealed. And at that point, the person has exhausted their administrative remedies.

[16] https://bit.ly/30dDUip

[17] https://bit.ly/2sgKqYW

Act 566 (HB1523): An Act Concerning The Treatment Of Female Inmates And Detainees In Correctional Or Detention Facilities; And Concerning Pregnant Inmates And Detainees

Sponsored by: Representative Petty; Senator Bledsoe

This law states that a correctional or detention facility shall not place an incarcerated or detained person who is pregnant, in labor, or in post-partum recovery in restraints unless they present a substantial flight risk, or have an extraordinary medical or security circumstance that compels it. If it is determined that they need to be restrained, the restraints shall be "the least restrictive type necessary" and must be "applied in the least restrictive manner necessary," and only certain types of restraints may be used. The facility must make written findings within ten days regarding the substantial flight risk or other extraordinary medical or security circumstance that dictated the person be restrained. These findings must be maintained by the facility for at least five years and made available to the public.

Ultimately, in all cases, a physician, nurse, or other health professional has final decision-making authority and can request that the restraints be removed.

This law also requires facilities to establish policies for providing necessities to individuals who are incarcerated: (1) prenatal vitamins as well as nutrition for those who are pregnant; (2) hygiene products; (3) undergarments; (4) a lower bunk for those who are pregnant. And, unless otherwise provided by the facility, incarcerated or detained individuals who are pregnant shall be guaranteed access to nonprofit educational programming, such as prenatal care, pregnancy-specific hygiene, and parenting classes.

Act 615 (HB1792): An Act Concerning The Competency Of A Person Awaiting Execution For A Capital Offense; And For Other Purposes

Sponsored by: Representative Gazaway; Senator B. Ballinger

When a person on death row is scheduled for execution, but it is believed they are not" competent to be executed," the individual or their attorney are to inform the Director of the Department of Correction (ADC) in writing and provide any supporting evidence they wish to be considered. Ultimately, the decision is left up to the Director of the Department. The practice has always been in place, but was never recognized as the legal standard until now. This codification is most likely a response to a 2018 Arkansas Supreme Court Case, *Greene v. Kelley*, (2018 Ark. 316) in which a severely mentally ill man was approved for execution by the ADC Director.

Jack Gordon Greene was one of the eight men scheduled to be executed in April of 2017. Soon after the scheduling, two doctors evaluated Greene and determined that he suffers from a serious mental illness: a psychotic disorder generally, but Delusional Disorder specifically. The diagnosis caused him to believe that his entire neurological nerve system was collapsing, to which he would constantly contort his body to alleviate perceived pain and stuff toilet paper in his ears to prevent the swelling of his brain. He also believed his attorneys and state officials were colluding to cover up those injuries they inflicted onto him, and that his execution was "designed as a final step in this conspiratorial cover-up." Despite these facts, ADC Director Wendy Kelley, by dismissing his most up-to-date evaluation and relying on one from 2010, found Greene competent to be executed.

Greene's lawyers argued that his scheduled execution violated the constitution for two reasons:

1. There was no "fundamental fairness in allowing the ADC Director, a member of the executive branch of government who is required to carry out the Governor's execution orders, complete discretion to decide a prisoner's competence"

2. "Greene's psychotic and cognitive disorders render him incapable" of rationally understanding "his choice between life and death and to resolve it knowingly and voluntarily."

They also called Greene's experience "a case study for why the ADC Director should be left out" of these decisions.

The Arkansas Supreme Court ruled: [1]-The circuit court erred in dismissing defendant's complaint for declaratory and injunctive relief against the director of the Arkansas Department of Correction because Ark. Code Ann. § 16-90-506(d)(1) (Supp. 2017), which vested sole discretion in the Director to determine whether a prisoner was competent to be executed, was unconstitutional on its face and violated the due-process guarantees of the United States and Arkansas Constitutions; however, it did not violate the cruel and unusual punishment prohibited by U.S. Const. amend. VIII and Ark. Const. art. 2, § 9 merely because there had been an extended passage of time between the crime and the punishment where the very nature of capital litigation in both state and federal courts suggested that delay in resentencing to death was the product of evolving standards of decency which inured to the defendant's benefit.

The case was reversed and remanded to the trial court for further proceedings regarding the aspect found to be unconstitutional.

Unfortunately, the Legislature responded by passing this law which continues the prior practice of the Director of the ADC making the determination regarding a person's competence to be executed, but attempts to correct the finding that that procedure is unconstitutional by adding a requirement for an evidentiary hearing to protect the defendant's due process rights. However, rather than a court of law, the hearing is conducted and decided by the Director of the Arkansas Department of Correction.

Act 821 (SB573): An Act Concerning Programs Available To Minors In A State Correctional Facility; Concerning Parole Discharge For Offenders Who Are Minors; Concerning Reinstatement Of Certain Rights For Minors Who Are Offenders; And For Other Purposes

Sponsored by: Senator G. Leding; Representative Clowney

This law allows incarcerated individuals who were convicted and sentenced as adults for offenses they committed before turning eighteen years old to participate in educational, training, or rehabilitative programs that are otherwise available to the general population of the state correctional facility.

It also authorizes a person to be discharged from parole, as well as regain their constitutional voting rights, if they: (1) were released on parole under the Fair Sentencing of Minors Act of 2017 for having committed an offense as a minor; (2) have served at least five

years on parole without a violation; and (3) the prosecuting attorney in the county where they were originally convicted has consented to the discharge of the person from parole.

Act 904 (HB1612): An Act To Amend The Law Concerning Child Support And The Centralized Clearinghouse; And For Other Purposes

Sponsored by: Representative Maddox

Before the passage of this law, a person's child support continued to accrue while they were in prison.

However, under this act, a parent's incarceration[18] will not "be treated as voluntary unemployment for the purpose of establishing or modifying an award of child support."

Act 982 (HB1941): An Act Concerning Items Purchased From The Department Of Correction's Industry Division; To Expand Eligibility To Persons Who May Purchase Items From The Department Of Correction's Industry Division; Concerning Reports From The Department Of Correction's Industry Division; And For Other Purposes

Sponsored by: Representative Slape

Those currently allowed to purchase goods produced by the Industry Division in the Arkansas Department of Correction are nonprofit organizations, current employees and retirees of the Department of Correction, and current employees of public offices, departments, institutions, school districts, and agencies within the state. This law extends that eligibility to include retirees of public offices, departments, institutions, school districts, and agencies in Arkansas.

Generally, goods purchased by individuals are to be used for "personal use only" and may not be resold, but, with the passage of this act, nonprofits can now resell these goods for a profit. This law also removes the restriction regarding the purchase of "furniture and seating" for both nonprofits and individuals, and allows them to buy home furnishings as long as they do not exceed $200 for any one purchase within a fiscal year.

And while an annual report detailing all materials, machinery, or other property procured, and their cost must still be provided, the Director of the Department of Correction now has ninety days after the end of the fiscal year to make it available rather than thirty.

Act 1088 (SB664): To Require That New Inmates Receive Reading Assessments And Dyslexia Screenings; To Require Reading And Dyslexia Services; And To Require Corrections Teachers Know Best Practices Of Science-based Reading Instruction

Sponsored by: Senator Elliott; Representative Scott

Currently, those entering the correctional system undergo a multi-day process known as "intake," during which they are given an academic and other relevant examinations.

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[18] Incarceration is a "conviction…[resulting] in a sentence of confinement to a local jail, state or federal correctional facility, or state psychiatric hospital for at least 180 days excluding credit for time served before sentencing."

Beginning on January 1, 2020, the Arkansas Department of Correction (ADC) will be required to include reading proficiency level assessments and dyslexia screenings for incarcerated individuals without a high school diploma or its equivalent as a part of this process. By October 1, 2020, ADC will be required to give reading proficiency-level assessments, dyslexia screenings, and reading instructions consistent with the science of reading, as provided under the Right to Read Act, to any incarcerated person who requests it.

Probation and Parole

Act 69 (HB 1241): An Act Concerning Probationer and Parolee Restricted Driver's Licenses Permits; And For Other Purposes

Sponsored by**:** Representative Tosh; Senator Irvin

Prior to the passage of this law, the Office of Driver Services was already required to issue a driver's license or identification card to incarcerated individuals who were within 180 days of release. This law extends the requirement to include individuals who have been released from custody for up to six months. While this may seem redundant, it is likely an attempt to provide Arkansas Community Correction with additional authority and time in the event of an oversight.

Individuals on probation or parole or within 90 days of release or parole whose license was previously suspended, assuming the license has not expired, may apply to receive a restricted driver's license from The Department of Finance and Administration that would allow them to drive a motor vehicle directly to and directly home from their place of employment, their school, their child's school, a scheduled meeting with their probation or parole officer, and anywhere their probation or parole officer has allowed them to travel.

Act 136 (HB1239): An Act Concerning A Warrantless Search By A Law Enforcement Officer In A Garage Or Outbuilding On The Property Of A Probationer's Or Parolee's Residence; And For Other Purposes

Sponsored by: Representative Petty; Senator J. Cooper

Under current law, a person who is placed on supervised probation or parole is required to sign a waiver as a condition of their release. This waiver allows any certified law enforcement or Department of Community Correction officer to conduct a warrantless search of their person, place of residence, or motor vehicle at any time, day or night. This law adds legal language making a person's garage or outbuilding a part of their legal residence.

Act 248 (HB1233): An Act Concerning At What Point A Probationer's Probation Begins And At What Point In The Sentencing Process The Supervision Of A Probationer By The Department Of Community Correction Begins; And For Other Purposes

Sponsored by: Representative Petty; Senator J. Cooper

An individual's suspension or probation used to commence "on the day it [was] imposed." But now, under this law, the Department of Community Correction assumes supervisory

responsibilities over a probationer “when the circuit court pronounces [their] sentence in the courtroom or upon the entry of a sentencing order, whichever occurs first.”

Act 249 (HB1243): An Act Concerning The Supervision Fee Paid By A Probationer Or Parolee To The Department of Community Correction; And For Other Purposes

Sponsored by: Representative Tosh; Senator Irvin

A person on probation, parole, or transfer under supervision of the Department of Community Correction is required to pay a monthly fee of $35.

Originally, $25 of that fee was credited to the Community Correction Revolving Fund for the “continuation and expansion of community correction programs as established and approved by the Board of Corrections.” The remaining $10 went into the Best Practices Fund to “ensure evidence-based programs and supervision practices are available to offenders supervised on either probation or parole.”

Now, with the passage of this law, the Best Practices Fund is eliminated and the full thirty-five dollar fees goes into the Community Correction Revolving Fund.

IV. FINES, FEES, AND COURT COSTS

A study from 2011[19] estimates that tens of millions of Americans nationwide have been assessed fines or fees as a part of their punishment. Of course, that's happening in Arkansas as well. As the state's use of fines and fees increases, poor Arkansans are being disproportionately impacted and can be sent to jail on the sole basis of inability to pay their debt owed to courts. While these monetary penalties are an effort to support its budget—and keep up with the growth of the criminal injustice system—they create an unjust incentive for courts to collect as much money as possible, even if it means not properly considering a defendant's ability to pay.

Act 246 (HB1147): An Act To Permit The Reopening Of A Circuit Court Case Without The Payment Of A Filing Fee In Order To Enforce A Monetary Judgment; And For Other Purposes

Sponsored by: Representative Capp; Senator G. Stubblefield

> Currently, there is a mandatory filing fee to open or reopen a cause of action in circuit court. To file a civil lawsuit, the initial filing fee is $165.00. If the final order has been entered and the cause of action deals with the same parties and issues presented in the initial cause of action, the filing fee to reopen the case is $50.
>
> However, there is an exception for certain types of cases. Applications made to revoke the conditional release of a person with mental illness or for an order of income withholding (which requires an employer of a parent ordered to make child support payments to surrender a portion of their income for these payments) are excluded.
>
> This law creates a third instance under which the mandatory filing fee to reopen the case would not be required. If a judgment for monetary damages was entered in the initial cause of action, and the party attempts to enforce it through a pleading or some other form of court action within twelve months of the final judgment, no filing fee is required to reopen the case.

[19] https://bit.ly/2z9gVIk

Act 372 (SB237): An Act Concerning The Jail Booking And Administration Fee; To Create The Law Enforcement Training Fund; To Provide For The Funding Of Law Enforcement Training And Other Law Enforcement Purposes; And For Other Purposes

Sponsored by: Senators Caldwell and Hill; Representatives Slape, Lynch, and Evans

Under current law, each person convicted of a felony or a Class A misdemeanor and committed to jail is assessed a booking and administration fee. However, this law increases that fee from $20 to $40.

Ten percent of each fee will be credited to the county sheriff's office fund by the county treasurer, and then transferred monthly to the Treasurer of the State for the newly-created Law Enforcement Training Fund.[20] The remaining funds shall be deposited into or credited to a special revenue fund.[21]

Act 567 (HB1548): An Act Concerning The Cost of A Mental Health Examination Of A Criminal Defendant; And For Other Purposes

Sponsored by: Representative Gonzales; Senator B. Ballinger

Under current law, criminal defendants who receive mental health services, particularly examinations to determine whether or not they are fit to proceed in court, are not personally responsible for the cost of these services. But with the passing of this act, the person or entity that provides mental health services may now impose this cost on the defendant. This act also requires that the The Division of Aging, Adult, and Behavioral Health Services of the Department of Human Services create rules establishing reasonable charges for the cost of treatment or other mental health services. These rules are to provide for the waiving or postponement of fees based on clinical considerations, the person's inability to pay, or a court determination that the defendant is wholly or partly indigent and qualifies for the appointment of an attorney.

Act 586 (SB268): An Act To Amend The Deposit And Distribution Of Fees To The Department Of Arkansas State Police Fund

Sponsored by: Senators B. Johnson and T. Garner; Representative Holcomb

Under current law, the Office of Driver Services must furnish a person's full driving record to persons and entities entitled to it pursuant to A.C.A. 27-50-906 who pay a seven dollar fee. One dollar of that fee is credited to the Revenue Division of the Department of Finance and Administration in the Commercial Driver License Fund, while the remaining six is given to the State Highway and Transportation Department Fund.

The passing of this law increases that fee from $7 to $8.50. The additional one dollar and fifty cents is to be deposited in the Department of Arkansas State Police Fund.

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[20] This fund will be used by the Arkansas Commission on Law Enforcement Standards and Training to establish and conduct training for law enforcement officers, personnel, jailers, 911 operators, or others determined by the commission to qualify for the training.

[21] These funds will be used for the maintenance, operation, and capital expenditures of a county jail or regional detention facility and for certificate pay for law enforcement and jailer personnel.

Act 675 (HB1781): An Act Concerning A Fee Assessed By The District Court To Draw, Issue, Or Seal A Summons Or Subpoena; And For Other Purposes

Sponsored by: Representative Capp; Senator Bond

This law requires the district court clerk to collect a $2.50 fee for drawing and issuing, or sealing a summons or subpoena unless the summons or subpoena follows the form prescribed by Rule 4 of the Arkansas Rules of Civil Procedure and the summons or subpoena is not a separate document. This money will be credited into the general fund of the district court that collects it.

Act 743 (SB575): An Act Concerning The Fines, Fees, And Costs That May Be Assessed For Certain Violations; And For Other Purposes

Sponsored by: Senators Flippo, Rice, and B. Johnson

Under current law, a defendant who is convicted of, pleads guilty or nolo contendere (no contest) to, or forfeits a bond in relation to most misdemeanor or felony cases must pay $150 in circuit court and $100 in district court.

In both district and circuit courts, most traffic offenses that are misdemeanors or violations under state law or local ordinances result in $75 in court costs.

With the passage of this law, failure to present proof of insurance has been added to the list of offenses with $25.00 in court costs to be assessed. This law no longer requires a person who violated the mandatory seat belt use law to pay $25 in district and circuit court-imposed costs, as long as they pay all other applicable fines prior to their first appearance.

Act 803 (SB315): An Act To Amend The Law Concerning Driver's License Reinstatement Fees; And For Other Purposes

Sponsored by: Senator K. Hammer; Representatives Kelly and Nicks

Under existing law, a person whose driver's license is suspended must pay a $100 reinstatement fee to the Office of Driver Services. But if the license is suspended because they were driving or boating while intoxicated, they are required to pay a $150 reinstatement fee for each DWI or BWI violation.

To ensure that the $100 outstanding balances were paid, a 2017 law (Act 915)—which expired on January 15, 2019—permitted the Office of Driver Services to request the Revenue Division of the Arkansas Department of Finance and Administration to intercept a taxpayer's state income tax refund. This act both reinstates those provisions and extends the Office of Driver Services' authority by allowing them to also collect $150 reinstatement fees from DWI or BWI suspensions from a person's state income tax refund.

Act 992 (SB493): An Act To Amend The Law Concerning Driver's License Reinstatement Fees; And For Other Purposes

Sponsored by: Senator K. Hammer; Representative Nicks

The Office of Driver Services currently collects a $100 reinstatement fee for each individual administrative order that suspends, revokes, or cancels a driver's license. The revenue collected from these fees are deposited into the State Police Retirement Fund and Department of Arkansas State Police Fund.

However, this law (also sponsored by two of the same legislators as Act 803) supersedes part of Act 803 regarding reinstatement fees for driver's licenses and adds a provision allowing certain[22] individuals whose driving privileges are suspended or revoked as a result of outstanding driver's license reinstatement fees to pay only one payment of $100 rather than $100 for each individual order.

This act also requires that the Department of Finance and Administration prepare an annual report to submit to the Legislative Council and the Director of the Department of Arkansas State Police. The report is to include: (1) the number of eligible participants; (2) the number of participants who were reinstated under this act; and (3) the dollar amount paid and the dollar amount written off during the time this act is effective.

Act 1044 (HB1782): An Act Concerning Court Costs And Fees For Specialty Courts In The State's District Courts; And For Other Purposes

Sponsored by: Representative Capp; Senator Bond

This law authorizes a district court judge, if they are presiding over a specialty court program, to require an "offender" to pay various court costs, treatment costs, drug testing costs, a local specialty court user fee, necessary supervision fees (including any applicable residential treatment fees), GPS monitoring costs, and/or continuous alcohol monitoring fees. The judge must establish a schedule for payment of specialty court program costs and fees. The costs for treatment, drug testing, alcohol monitoring and supervision will be set and paid to the service providers, and every other cost is to be set by the judge and paid to the District Court Specialty Court Program Fund.

A fee or costs under this section may be waived in whole or in part if the court finds that the person subject to paying the cost or fee is indigent.

[22] To qualify for this provision, a person must have paid all other court costs, fines, and fees associated with the criminal offense that led to their driver's license suspension; have graduated from a specialty court program; and provided the sentencing court with a reinstatement letter from the Department of Finance and Administration showing all outstanding suspension or revocation orders. Fees to reinstate commercial driving privileges and those related to driving or boating while intoxicated, and driving or boating under the influence are excluded.

V. JUVENILES

Over and over again, the Supreme Court of the United States has upheld the fact that children are different than adults. Over the last several years, Arkansas has joined other states across the nation in reevaluating it's treatment of minors under the law. Buoyed by the success of 2017's Fair Sentencing of Minors Act (Act 539), the most comprehensive reform efforts came on behalf of juveniles.

Diversion

Act 189 (SB152): An Act To Improve Outcomes For Youth And Families Through The Transformation Of The Juvenile Justice System; And To Reform The Juvenile Justice System To Utilize Validated Risk Assessment Tools, Create A Plan For Diversion Options To Maximize The Benefits For Juvenile Offenders, And Develop A Plan For The Reinvestment Of Funds Into Community-Based Services

Sponsored by: Senators Irvin, B. Davis, and J. English; Representatives C. Fite, Barker, Bentley, Brown, Capp, Cavenaugh, Crawford, Dalby, Della Rosa, M. Gray, Lundstrum, J. Mayberry, Petty, Rushing, Speaks, and Vaught

> This law requires that the Juvenile Judges Committee of the Arkansas Judicial Council, in conjunction with the Division of Youth Services (DYS), select a validated risk assessment system to be used by courts and DYS for commitment throughout the state. Diversion agreements based on the validated assessment tool selected must also be implemented for nonjudicial probation by all juveniles courts and ensure restitution payments to victims.
>
> Courts may use only the validated risk assessment so selected and it must be applied to all commitment decisions for all juvenile offenders.
>
> If a juvenile who is adjudicated delinquent of only a misdemeanor offense is determined by the assessment to be a low risk, a court is no longer allowed to commit them to DYS. But if a juvenile is determined to be a moderate or high risk, they may be committed to the division as long as the circuit court has made written findings considering: (1) the juvenile's previous history; (2) if the juvenile has been adjudicated delinquent, and if so, whether the offense was against a person or property; (3) whether any other previous history of antisocial

behavior or patterns of physical violence exist; (4) whether the circuit court has previously offered the juvenile less restrictive programs or services available to the court; (5) written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and(6) any other factors deemed relevant by the circuit court.

The duties of DYS are also amended through this law. In addition to overseeing reform of the state's juvenile justice system, they now also include: (1) reviewing the quality and consistency of reforms and reform proposals; (2) monitoring youth and family outcomes related to reforms; (3) developing a reinvestment plan to redirect savings realized from reductions in the number of secure out-of-home placements; and (4) developing a collaborative information-sharing system among the Department of Human Services, the Administrative Office of the Courts, and other stakeholders.

DYS must also provide individualized treatment and placement decisions with measurable goals and regular reassessments, based on the results of an initial assessment and the risk level assigned to the juvenile by the validated risk assessment used in the court's commitment decision.

Division of Youth Services (DYS)

Act 365 (HB1384): An Act To Clarify When The Division Of Youth Services May Release Information About A Juvenile To The General Public; And For Other Purposes

Sponsored by: Representative C. Fite; Senator Rice

Current law requires that if a juvenile is committed to DYS of the Department of Human Services for an offense for which they could have been tried as an adult and leaves "their assigned placement without authorization," the Director of DYS, or their designee, must release a "description of the juvenile and any other pertinent information deemed necessary to aid in the apprehension of the juvenile and safeguard the public welfare," including the juvenile's name and age.

This law no longer obligates disclosure of that information, but is replaced with a requirement to release the juvenile's photograph, name, age, and "felony offense for which the juvenile is committed to the custody of DYS" in situations where the juvenile was committed to DYS for an offense that would be a felony if committed by an adult, and they "[pose] a serious threat to public safety or a member of the public," or are "at a heightened risk of harm if...not apprehended immediately due to [their] age, disability, medical condition, mental capacity, or another emergency circumstance." The division may also release identifying information if the juvenile is committed under extended juvenile jurisdiction. The division must also promulgate rules detailing the factors that will be considered in determining when identifying and descriptive information may be released.

Act 431 (HB1533): An Act To Amend The Law Concerning Possession Of A Weapon At A Residential Treatment Facility Owned Or Operated By The Division Of Youth Services; And For Other Purposes

Sponsored by: Representative Pilkington; Senator Rice

> Under existing law, it is prohibited to carry a firearm, open or concealed, in a detention facility, prison, or jail. This law creates an additional location, and no longer allows an individual to carry a firearm in any part of a "residential treatment facility owned or operated by DYS," including a parking lot of said facility."

Act 971 (HB1755): An Act Concerning The Punitive Isolation Or Solitary Confinement Of Individuals Who Are Under Eighteen (18) Years Of Age; And For Other Purposes

Sponsored by: Representatives Scott and Gazaway; Senators Elliott and A. Clark

> This law prohibits a person in a juvenile detention or state correctional facility from being placed in punitive isolation or solitary confinement[23] for more than twenty-four hours as a disciplinary measure unless it is due to: (1) a physical or sexual assault committed by the juvenile while in the facility; (2) the juvenile's conduct posing an "imminent threat of harm to the safety or well-being of [themselves], the staff, or other juveniles in the...facility"; or (3) the juvenile escaping or attempting to escape from the facility.
>
> However, this restriction can be overruled with written authorization—provided every twenty-four-hour period during which the juvenile remains in punitive isolation or solitary confinement—from the Director of the juvenile detention facility or Warden of the state correctional facility (or their designee).

Safety & Wellbeing

Act 185 (SB168): An Act To Amend The Safe Haven Act; And For Other Purposes

Sponsored by: Senator Bledsoe; Representative Petty

> It is an affirmative defense[24] to the charge of endangering the welfare of a minor if a parent "voluntarily delivered… and left the child with, or voluntarily arranged for another person to deliver… and leave the child with, a medical provider or law enforcement agency."
>
> This law makes the same true of fire departments and also allows any of these three locations to voluntarily install "a newborn safety device."[25]
>
> If a hospital, law enforcement agency, or fire department chooses to do so, they are not only responsible for the cost but also the installment of an adequate dual alarm system that is

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[23] "Punitive isolation" is the placement of a minor in a location separate from the general population as punishment; "Solitary confinement" is the isolation of a minor in a cell separate from the general population as punishment.

[24] An "affirmative defense" to a civil lawsuit or criminal charge is a fact or set of facts other than those alleged by the plaintiff or prosecutor which, if proven by the defendant, defeats or mitigates the legal consequences of the defendant's otherwise unlawful conduct.

[25] Newborn safety devices must be physically located inside a hospital, law enforcement agency, or fire department that is staffed twenty-four hours a day by a medical services provider and located in an area that is "conspicuous and visible to the employees of the hospital, law enforcement agency, or fire department."

connected to the physical location of the device. The alarm must be tested at least one time per week to ensure it is in working order and visually checked at least two times per day.

The city of Benton has already voted to install a "Safe Haven Baby Box."[26]

Act 913 (HB1674): An Act To Amend The Law Concerning Arresting Authority; To Authorize The Collaborative Multi-agency Alliance To Form And Implement A Child Abduction Response Team; And For Other Purposes

Sponsored by: Representative Petty; Senator Irvin

This law requires numerous state agencies[27] to collaborate in a "multi-agency effort to rescue abducted or endangered children [and] implement one or more statewide child abduction response teams." Each agency must execute and adhere to a memorandum of understanding concerning "the guidelines for the implementation of one or more statewide child abduction response teams," and "coordinate the available resources of the agency to implement one or more statewide child abduction response teams."

In addition to these requirements, the Department of Arkansas State Police must assemble one or more statewide child abduction response team and ensure that the agencies work in partnership to respond to child abduction incidents and provide preventative measures for child abduction. The Criminal Justice Institute must also coordinate the certification and recertification of each statewide response team.

Act 945 (SB662): An Act To Create The Child Welfare Ombudsman Division Within The Arkansas Child Abuse/Rape/Domestic Violence Commission; And For Other Purposes

Sponsored by: Senator A. Clark

This law creates the Child Welfare Ombudsman[28] Division.

Duties of the Child Welfare Ombudsman include: (1) working independently of DHS, the Administrative Office of the Courts, Commission for Parent Counsel, the attorney ad litem program, the Public Defender Commission, and Arkansas CASA; (2) communicating with a juvenile and the juvenile's parent, subject to the conditions set by the parties' attorneys; (3) recommending necessary changes to procedure; (4) review an issue or concern related to a court case or investigation of a juvenile; (5) providing training and technical assistance if requested by a member of the child welfare system, the General Assembly, or office of the Governor; and (6) preparing an annual report concerning the work of the Child Welfare Ombudsman Division, the operation of the child welfare system, and any recommendations related to the operation of the child welfare system.

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[26] https://bit.ly/31ArlNu

[27] These agencies include the Attorney General, Department of Arkansas State Police, Criminal Justice Institute, Arkansas State Game and Fish Commission, Arkansas Sheriffs' Association, Arkansas Department of Emergency Management, Arkansas Association of Chiefs of Police, Department of Community Correction, and Office of the Prosecutor Coordinator.

[28] An "ombudsman" is a state official appointed, in this case, to ensure a child's safety and well-being.

Hearings involving adoptions and cases of children in foster care, and allegations or reports of child maltreatment (with some exceptions[29]), are open to the Child Welfare Ombudsman. However, the court may exclude them based on its authority under the Arkansas Rules of Civil Procedure or the Arkansas Rules of Evidence or if it is in the best interest of the child.

Other Notable Bills

Act 640 (HB1398): An Act To Amend Provisions Of The Arkansas Code Concerning Student Attendance and Discipline; And For Other Purposes

Sponsored by: Representative S. Meeks; Senator E. Cheatham

This law makes many notable changes concerning school districts' **discipline policies**.

Discipline policies must now include programs, measures, or alternative means and methods to continue student engagement and access to education during periods of suspension or expulsion. Teachers and administrators, classified scheduled employees and volunteers shall be provided with training and support regarding appropriate student discipline, behavioral intervention, and classroom management. Two disciplinary acts—the "School Discipline Act" and the "School Dismissal Act"[30]—were also repealed and removed from law.

In the matter of **student suspension and expulsion**, a superintendent is no longer required to recommend an automatic one-year expulsion from school for the possession of a firearm or other prohibited weapon. And while the Department of Education will still collect information regarding the students who were expelled for firearm-related misconduct, it is no longer available by phone, fax, or mail "to any school in the state," as it was previously.

Regarding **the development of future disciplinary policies**, the school district's committee on personnel policies is required to review annually the school district's existing student discipline policies and discipline data from the state and district and the committee may recommend changes "based on the committee's review."

However, this law also grants a superintendent the ability to modify penalties for a student on a case-by-case basis (with potential deviation from the stated discipline policies).

A teacher or school administrator had been defined by prior law as: "a person employed by a school district and required to have a state issued educator license as a condition of their employment." This law redefines teacher or school administrator as "a person employed by a school district and required to hold a valid Arkansas standard teaching license, an ancillary license, a provisional license, a technical permit, an administrator's license issued by the State Board of Education, and a non licensed classroom teacher or administrator employed in a position under a waiver from licensure.

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[29] As stipulated under Act 329, a member of the General Assembly is allowed to attend, unless prevented by a court.

[30] The School Dismissal Act required every school district board of directors to "hold its pupils strictly accountable for any disorderly conduct," and adopt and file written policies with the Department of Education concerning the "violation of school standards" such as "disrespect" for employees, "vandalism, and other undesirable behavioral patterns. The School Discipline Act authorized teachers to hold every pupil "strictly accountable for any disorderly conduct," and allowed for the use of corporal punishment.

Any school district failing to file with the Department of Education disciplinary policies pursuant to these requirements shall have all state aid funds withheld until such disciplinary policies are filed with the Department.

Act 931 (SB506): An Act To Amend The Law Concerning The Youth Justice Reform Board; And For Other Purposes

Sponsored by: Senator Irvin

This law removes the twenty-one member limit and mandates that two members of the Senate, two members of the House of Representatives, and juvenile court staff or representatives serve on the Youth Justice Reform Board. It also extends the operation of the board for two more years, and will now be ending on June 30, 2021.

VI. LAW ENFORCEMENT

All across the state, police corruption and excessive force persist. An increasingly militarized police force too often thinks of itself "at war" with the public, disproportionately affecting communities of color and the poor. This session saw a few positive changes, most notably as it relates to civil asset forfeiture, a process which allows police to seize and keep or sell any property they allege to be involved in a crime. Additionally, this session saw an expansion of police powers, and allowed public schools to institute their own private police forces.

Act 288 (HB1182): An Act To Amend The Law Concerning Distracted Driving; To Make The Use Of A Handheld Wireless Telephone In A School Zone A Primary Offense; And For Other Purposes

Sponsored by: Representative C. Fite; Senator M. Pitsch

> Under current law, the driver of a motor vehicle is not allowed to use a handheld wireless telephone, unless it is for an emergency purpose, while passing a school building or school zone during school hours if children are present and outside the building.
>
> This act creates an exception for law enforcement. As long as they are "engaged in the performance of [their] official duties," they do not have to comply with this regulation. It also allows officers to "stop or detain a driver of a motor vehicle solely to determine" whether or not an individual is complying with this regulation.

Act 472 (SB197): An Act To Clarify The Scope In Which A Law Enforcement Officer May Carry An Open Or Concealed Handgun Both While On Duty And Off Duty; To Declare An Emergency; And For Other Purposes

Sponsored by: Representative Breaux; Senator B. Ballinger

> Certified off-duty officers, under this law, are also allowed to possess a handgun on school property. If they are carrying a handgun in a public school or publicly supported institution of higher education, the school may require them to have a physical copy of valid identification identifying them as law enforcement.
>
> This law permits off-duty certified law enforcement officers, officers of the court, bailiff or other person authorized by the court to possess a handgun in a courtroom or courthouse.

However, they are not allowed to carry a firearm in the courtroom if they are a party or witness to a case unless the law provides otherwise.

Certified law enforcement officers, whether on duty or off duty, are allowed to possess a firearm in a publicly owned building or facility, or the State Capitol Building or Arkansas Justice Building.

Act 476 (SB308): An Act To Be Known As "The Civil Asset Forfeiture Reform Act Of 2019"; Concerning Asset Forfeiture In Criminal Cases; And For Other Purposes

Sponsored by: Representatives McCollum and Gates; Senator Hester

"Civil asset forfeiture" is a legal process in which law enforcement officers seize property from those suspected of involvement in a crime or illegal activity without necessarily charging the owners with wrongdoing. This reform law requires officers and prosecutors to obtain a criminal conviction before an individual's assets may be forfeited.

However, a court may waive that requirement if the prosecuting attorney shows that prior to conviction, "by clear and convincing evidence," the person from whom the property was seized: (1) died; (2) was deported; (3) was granted immunity or reduced punishment for testifying or assisting a law enforcement agency or prosecution; (4) fled the jurisdiction or failed to appear on that criminal charge; (5) failed to answer the complaint for the forfeiture; (6) abandoned or disclaimed interest or ownership in the property; or (7) gave a written agreement between themselves and the prosecutor/other parties as to the said property's disposition.

Act 629 (SB383): An Act Concerning Institutional Law Enforcement Officers; To Allow Public School Districts And Open-Enrollment Public Charter School To Establish And Appoint An Institutional Law Enforcement Officer; And For Other Purposes

Sponsored by: Senators B. Davis and B. Ballinger; Representative Slape

This law allows for charter and public enrollment schools to create police departments in their school districts. "Institutional law enforcement officers"[31] will have all general law enforcement officer powers, except to the extent limited by the executive head who appointed them, and must meet the standards and qualifications for certification required by the Arkansas Commission on Law Enforcement Standards and Training. Their duties are to: (1) protect property; (2) preserve and maintain proper order and decorum; (3) address and prevent unlawful assemblies, disorderly conduct, and trespassing; (4) exclude or eject an individual who is deemed by the institution to be detrimental to the institution's well-being; (5) regulate the operation and parking of motor vehicles on or near the institution, the grounds, buildings, streets, alleys and sidewalks under the control of the institution; (6) exercise police supervision on behalf of the institution; (7) arrest any individual who commits an offense that violates a law or local city ordinance; and (8) deliver a person they have arrested before a court of competent jurisdiction.

[31] An individual appointed by the superintendent of a public school district or the head of an open-enrollment public charter school to exercise law enforcement authority on the property of an institution.

In the case that an officer causes damages to property or injuries to individuals, they are not to be held personally liable as long as they were acting within the scope of their authorities as authorized by this law.

Fort Smith Public Schools have already instituted their own police force, and took effect at the beginning of the 2019-2020 school year.[32]

Act 646 (HB1529): An Act Requiring Training Of Law Enforcement Officers In The Identification Of A Controlled Substance Overdose And The Role Of Naloxone; And For Other Purposes

Sponsored by: Representatives Womack, A. Collins, Beck, Bentley, Clowney, Crawford, Godfrey, Gonzales, Ladyman, Lundstrum, Payton, Richmond, Scott, and B. Smith

This law requires the Arkansas Commission on Law Enforcement Standards and Training, along with the Arkansas Drug Director and the Criminal Justice Institute, to develop a curriculum to be delivered to students attending courses, which are certified by the commission, for basic law enforcement training. The purpose of the training is to educate its students on how to identify the signs that someone has overdosed on a controlled substance as well as teach ways in which law enforcement can safely assist the person that has overdosed.

The curriculum must include: (1) the signs and symptoms of an overdose associated with the use of a controlled substance, including opioids; (2) first-responder treatment and triage for a controlled substance overdose situation; (3) first-responder safety considerations in a potential or actual controlled substance overdose situation; and (4) an overview of the role of naloxone in certain opioid overdose situations.

Law enforcement agencies are also encouraged to seek assistance from the Arkansas Drug Director's officer and/or the Criminal Justice Institute to develop a naloxone program.

Act 839 (HB1567): An Act Concerning Investigations Into Sexual Assault; Concerning Sexual Assault Collection Kits; Concerning The Submission Of Sexual Assault Collection Kits; And For Other Purposes

Sponsored by: Representatives Lundstrum, Boyd, Burch, Cavenaugh, Coleman, Crawford, M. Gray, Ladyman, McCollum, Petty, Richmond; Senators Bond, J. Cooper, Hester, G. Leding, Irvin

After the passage of this law, a healthcare provider that has collected victim information as part of a medical-legal examination is required to enter that information into the State Crime Laboratory's sexual assault collection kit tracking system before transferring the sexual assault collection kit to a law enforcement agency.

A law enforcement agency must take the kit into custody "as soon as possible and within three business days of notice from the healthcare provider." When it is received, they must enter all necessary information into the system.

[32] https://bit.ly/33vDzbP

When a law enforcement agency receives a sexual assault kit from a healthcare provider that relates to a report of a sexual assault that occurred outside the jurisdiction of the law enforcement agency, they must seliver it to the law enforcement agency having jurisdiction within 10 days of learning that the other law enforcement agency has jurisdiction. Also, a sexual assault colleciton kit shall be submitted to the laboratory by the receiving law enforcement agency as soon as possible, no longer than 15 days after receipt. A law enforcement agency is not required to submit an anonymous kit to the laboratory if the victim does not affirmatively request submission. IF a victim chooses to provide a personal statement about the sexual assault to a law enforcement agency at any time after initially declining to provide a perosnal statement, the anonymous kit shall be delivered to the laboratory as soon as possible, but no later than 15 days after the victim chooses to provide a personal statement to the law enforcement agency.

It is also required by this law that starting July 1, 2019, the State Crime Laboratory tests all sexual assault collection kits received from law enforcement agencies "with the goal of developing autosomal DNA profiles that are eligible for entry into the Combined DNA Index System," and must do so within sixty days of receiving it from law enforcement.

Act 1010 (HB1217): An Act Concerning The Submission Of And Forensic Testing Of Firearms By The State Crime Laboratory; And For Other Purposes

Sponsored by: Representative Tosh

Prior to the passage of this law, if a firearm came into the custody of a law enforcement agency, it was required to be delivered to the State Crime Laboratory within thirty calendar days for ballistics testing or, if it was being used as evidence in a trial, thirty calendar days after the final adjudication.

This law removes that requirement. However, if they so wish, officers can continue to deliver firearms that came into their custody to the State Crime Laboratory for "forensic testing for firearms meeting the caliber and type determined by [its] Executive Director."

This act also clarifies that the requirement for a law enforcement agency to immediately notify the owner (unless they are prohibited by law from possessing the firearm) after the law enforcement agency regains possession of the firearm so that the owner may regain possession does not apply until after final adjudication.

VII. MODIFIED OFFENSES

A report[33] compiled by The Arkansas Sentencing Commission counts eleven laws modifying or enhancing penalties for criminal offenses. These enhanced sentences will further exacerbate lengthy prison sentences and prison overcrowding in Arkansas.

Courts

Act 322 (HB1369): An Act Concerning The Offense Of Failure To Appear; To Amend The Definition Of "Pending Charge"; And For Other Purposes

Sponsored by: Representative Capp

> Currently, if a person is cited or issued a summons as an accused party and fails to appear in court without "reasonable excuse," they are guilty of failure to appear. A failure to appear occurs if the required appearance was in regard to a "pending charge" or disposition.[34] This law extends the definition of "pending charge," to not only include a charge from an arrest, but also the issuance of a citation or criminal summons.

Act 376 (SB 346): An Act To Amend Arkansas Law Concerning The Procedures For Petitions And Referred Constitutional Amendments; To Declare An Emergency; And For Other Purposes.

Sponsored by: Senator M. Pitsch; Representative Vaught

> Currently, a person commits petition fraud if they knowingly: (1) sign a name other than their own to a petition; (2) sign their name more than one time to a petition; or (3) sign a petition when they are not legally entitled to sign the petition.

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[33] https://bit.ly/35MLSjv

[34] Failure to appear is a Class A misdemeanor if in regards to a Class A misdemeanor charge; a Class B misdemeanor if in regards to a Class B or Class C misdemeanor charge; an unclassified misdemeanor with the same penalty as the pending charge or disposition if in regards to an unclassified misdemeanor; a Class C misdemeanor if the required appearance was in regard to a violation.

This law expands the definition of petition fraud to include printing a name, address, or date of birth other than their own, or false date of signing, unless the signer requires assistance due to a disability and complies with this law. The charge of petition fraud is also enhanced with this act, and changed from a Class A misdemeanor to a Class D felony.

Driving Related

Act 166 (HB1006): An Act To Amend The Law Concerning The Penalties Imposed For The Unlawful Passing Of A School Bus; And For Other Purposes

Sponsored by: Representative C. Fite; Senator B. Ballinger

Under existing law, if an individual were to unlawfully pass a school bus, they would, upon conviction, be guilty of a misdemeanor and fined no less than $250 but no more than $100,000 and/or up to ninety days in jail. This law creates two exceptions to the current penalties for violations involving school buses.

Now, if an individual passes a school bus while it displays its alternating red warning lights for the purpose of loading or unloading passengers or fails to come to a complete stop, or the person demonstrates a “reckless disregard for the safety of the passengers of the school bus,” they would, upon conviction, be charged with a heightened penalty: a Class A misdemeanor and a fine of no less than $500 but no more than $2,500.

Act 550 (HB1689): An Act To Amend the Law Concerning Penalties For Passing An Authorized Vehicle Stopped On The Highway; And For Other Purposes

Sponsored by: Representatives C. Fite and L. Johnson; Senator M. Pitsch

Prior to the passage of this law, the penalty for passing an authorized vehicle stopped on the highway without moving to the farthest lane possible was a fine from $35 to $500 and/or ninety days in jail. Now, the penalty is heightened: a $250 to $1,000 fine and/or ninety days in jail.

Act 654 (HB1411): An Act Concerning The Definition Of "Motor Vehicle" Under The Omnibus DWI Or BWI Act; And Concerning A Test For Blood Alcohol Content When A Motor Vehicle Or Boating Accident Occurs

Sponsored by: Representative Burch; Senator E. Cheatham

Each time the driver of a motor vehicle or motorboat is involved in an accident that results in the loss of human life, or when there is reason to believe that death may result, or when a person sustains serious physical injury, the driver’s or operator’s breath, saliva, or urine is chemically tested (even if the driver or operator dies as a result of the accident), in order to determine whether alcohol concentration and/or a controlled substance is present in their body.

This act—known as "Jacob's Law"—redefines "motor vehicle" to include all-terrain vehicles and agricultural vehicles (with some exceptions[35]), and requires the same testing.

Act 738 (SB534): An Act To Amend The Law Concerning Distracted Driving To Comply With Distracted Driving Requirements Under Federal Law; And For Other Purposes

Sponsored by: Senator B. Johnson; Representative Christiansen

Before the passage of this law, there was a maximum fine—$250 for the first offense and $500 for each subsequent offense—that a court could impose for use of a wireless communications device while driving, but no mandatory minimum requirement. This law changes that and set the minimum fine as $25 for all first offenses and $50 for each subsequent offense.

And if an individual pleads guilty or nolo contendere (no contest), or is determined to have been involved in a collision or accident while using a wireless communications device, a court is required to, in addition to any other sentence, assess an additional fine "double the amount of the standard fine imposed."

Human Trafficking

Act 842 (HB1634): An Act To Include Acts Committed By A Victim Of Human Trafficking Under The State's Rape Shield Law; And For Other Purposes

Sponsored by: Representatives Petty and Scott

This law adds a victim's prior sexual conduct to Rape Shield protections if they were a victim of human trafficking and the defendant is being prosecuted under the Human Trafficking Act of 2013. It is no longer admissible by the defendant, either through direct examination of any defense witness, or cross-examination of the victim or other prosecution witness, to attack the credibility of the victim, to prove consent or any other defense, or for any other purpose.

Act 1020 (HB1695): An Act To Protect Children Who Are Being Trafficked From Being Prosecuted For Prostitution; And For Other Purposes

Sponsored by: Representatives Scott and Petty

Under this law, a person is no longer guilty of prostitution if they were a victim of human trafficking at the time they commited or were arrested for "an act that meets the elements of the offense of prostitution."

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[35] The exclusions are: a motor vehicle designed to assist a person with a physical disability with walking; a motorized scooter or other vehicle designed to be used as a toy by a child; a bicycle equipped with a small motor designed to assist the bicycle operator and that is not operated at a speed of greater than 20 m.p.h.; a riding lawnmower that is not operated on a public roadway; an electric personal assistive mobility device that is designed to not be capable of a speed of more than 20 m.p.h.; and a device moved by human power or used exclusively upon stationary rails or tracks.

Mandated Reporters

Act 186 (HB1022): An Act Concerning The Civil And Criminal Liability Of Mandated Reporters Who Act In Good Faith; And For Other Purposes

Sponsored by: Representatives Dotson, Warren, Capp, Cozart, Dalby, Evans, Gazaway, L. Johnson, Maddox, Vaught, and Wing; Senators J. English and B. Ballinger

All mandated reporters are required to immediately notify the Child Abuse Hotline if they have "reasonable cause to suspect" that a child has been subjected to, or died as a result of, child maltreatment, or observes that a child being subjected to conditions or circumstances that would "reasonably result in child maltreatment."

This law states that if a person notifies the hotline "in good faith," they are immune from civil and criminal liability.

Act 970 (HB1746): An Act To Provide Civil and Criminal Immunity For Individuals Who Make Reports To The Child Abuse Hotline In Good Faith; And For Other Purposes

Sponsored by: Representatives Kelly, Bentley, Evans, Gates, B. Smith, Vaught, and Wooten; Senator K. Hammer

Currently, any individual may notify the Child Abuse Hotline if they have reasonable cause to suspect that child maltreatment has occurred or that a child has been subjected to conditions or circumstances that would reasonably result in, or has died as a result of, child mistreatment. Under this law, "a person who in good faith notifies the hotline in accordance with [the law]," is immune from civil and criminal liability.

Act 530 (HB1437): An Act Concerning School Safety; And For Other Purposes

Sponsored by: Representative Dalby; Senator Hickey

This law requires mandated reporters to notify law enforcement of serious and imminent threats of violence in or targeted at a school when the threats were communicated to them "in the course of their professional duties," and requires that reports be made within twenty-four hours. It also defines who are categorized as mandated reporters for this purpose.

If an alert is made "in good faith," the mandated reporter is immune from civil or criminal liability. However, as in other cases, if a person "knowingly" fails to alert law enforcement, they are guilty of failure to notify by a mandated reporter in the first degree, and will be charged with a Class A misdemeanor. If a person "recklessly" fails to inform law enforcement, they are guilty of failure to notify by a mandated reporter in the second degree, and will be charged with a Class C misdemeanor. Further, if a mandated reporter "purposely makes a report containing a false accusation to law enforcement knowing the allegation to be false," they are guilty of making a false report. The first offense is a Class A misdemeanor and each subsequent offense is a Class D felony.

Orders of Protection

Act 905 (HB1734): An Act Concerning The Affirmative Defenses To A Violation Of An Order Of Protection; And For Other Purposes

Sponsored by: Representative Gazaway

Currently, it is an affirmative defense to the offense of violation of an order of protection if: (1) the parties have reconciled prior to the violation, and (2) the petitioner invited the defendant to come to their residence or place of employment which is listed in the order with knowledge that the defendant's presence would be in violation of the order of protection.

This law also makes it an affirmative defense to the offense of violating an order of protection if: (1) the petitioner arranged or invited the defendant to meet at a location, or took affirmative steps to communicate with the defendant, with the promise that they would not report the defendant to law enforcement for the violation, or (2) the petitioner visited the residence or place of employment of the defendant on their own accord, and without any threat, duress, or coercion on the part of the defendant.

Act 908 (HB1851): An Act Concerning The Issuance Of An Order Of Protection; And For Other Purposes

Sponsored by: Representative Bentley; Senator G. Stubblefield

Under current law, after an order of protection has been issued, the police must notify the restrained party of the penalties associated with violating the order[36] as well as inform them that if they are subject to an order of protection or have been convicted of a misdemeanor for domestic violence, it is illegal to ship, transport, or possess a firearm or ammunition.

This act requires that the restrained party is also receives notification that they are forbidden from: (1) harassing, stalking, or threatening any person named as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party in the order of protection, and (2) engaging in other conduct that would place those previously listed in reasonable fear of bodily injury.

This law also requires that an order of protection shall include either: (1) a finding that the respondent presents a credible threat to the physical safety of a family or household member named in the order of protection, a child of the family or household member, or a child of the respondent or enjoined party, or (2) an explicit prohibition against the use, attempted use, or threatened use of physical force against the person named as a family or household member in the order of protection, a child of the family or household member, or a child of the respondent or enjoined party which would reasonably be expected to cause bodily injury.

[36] A violation of the order of protection is a Class A misdemeanor with a maximum penalty of one year's imprisonment in the county jail and/or a fine of up to $1,000. Subsequent violations within five years are a Class D felony.

Act 180 (SB149): An Act To Create The Arkansas Human Life Protection Act; To Abolish Abortion In Arkansas And Protect The Lives Of Unborn Children; And For Other Purposes

Sponsored by: Senators Rapert, B. Ballinger, Bledsoe, A. Clark, B. Davis, Hester, Hill, B. Johnson, G. Stubblefield, J. Cooper, Flippo, T. Garner, K. Hammer, and Irvin; Representatives Bentley, Barker, Beck, Bragg, Breaux, Cavenaugh, Christiansen, Cloud, Coleman, C. Cooper, Crawford, Della Rosa, Dotson, Gates, Gonzales, G. Hodges, Holcomb, Lowery, Lundstrum, J. Mayberry, McCollum, Penzo, Petty, Richmond, S. Smith, Speaks, Sullivan, Womack, Wooten, A. Davis, Hawks, Payton, and B. Smith

In 1973, the United States Supreme Court ruled in Roe v. Wade that a woman has the constitutional right to an abortion, and that states are not allowed to interfere with that right. However, six states—Arkansas included—have passed "trigger laws" that would make abortion illegal in the event that Roe v. Wade, "in whole or in part," is overturned.

In Arkansas, if this law were to go into effect, a person would be prohibited from performing or attempting to perform an abortion except to save the life of a pregnant woman in a medical emergency. A violation of this act would be an unclassified felony with a fine up to $100,000 and/or imprisonment up to ten years.

This law would also go into effect if an amendment to the U.S. Constitution is adopted that, in whole or in part, restores to the state of Arkansas the authority to prohibit abortion.

Act 493 (HB1439): An Act To Create The Cherish Act; To Prohibit Abortions After Eighteen (18) Weeks; Gestation Except In A Medical Emergency; And For Other Purposes

Sponsored by: Representatives Lundstrum, Barker, Bentley, Cavenaugh, Cloud, Crawford, Dotson, M. Gray, Ladyman, McCollum, Petty, Richmond, Slape, Penzo, B. Smith, C. Cooper, Sullivan, and Christiansen; Senator Rapert, J. Cooper, B. Davis, and Hester

This law, except in a medical emergency or if the pregnancy results from rape or incest, prohibits a person from performing, inducing, or attempting to perform or induce an abortion unless the physician has made a determination of and documented the probable gestational age of the unborn human being is less than 18 weeks gestation. A person who purposely or knowingly violates this is guilty of a Class D felony. The woman upon whom the abortion was performed is not to be prosecuted, but the physician will have their medical license suspended or revoked.

If an abortion is performed after eighteen weeks of pregnancy, the physician will file a report for the Department of Health within fifteen days of the procedure. The report is to include: (1) the date on which the abortion was performed; (2) the specific method used; (3) the probable gestational age of the unborn human being; (4) a statement declaring that procedure was necessary; (5) medical indicatons supporting the necessity; (6) the possible health consequences and specific method used; and (6) signature of the physician attesting that this information is true. A physician who purposely or knowingly delivers a false report is subject to a civil penalty or fine up to $2,000 per violation imposed by the department. The court must also render "a reasonable attorney's fee," to the prevailing party.

This law also allows a prosecuting attorney with appropriate jurisdiction or the Attorney General to seek injunctive relief against a person who purposely, knowingly or recklessly violated this law.

Act 619 (SB2): An Act To Create The Down Syndrome Discrimination Act By Abortion Prohibition Act; To Prohibit Abortion Because The Unborn Child Has Or May Have Down Syndrome; And For Other Purposes

Sponsored by: Senators T. Garner, B. Ballinger, Bledsoe, A. Clark, J. Cooper, B. Davis, L. Eads, J. English, Flippo, K. Hammer, Hester, Hill, Irwin, B. Johnson, Rapert, Rice, G. Stubblefield, J. Sturch, and D. Wallace; Representatives Barker, Beck, Bentley, Breaux, Brown, Capp, Christiansen, Cloud, C. Cooper, Crawford, Della Rosa, Evans, C. Fite, M. Gray, Hawks, Kelly, Lundstrum, Maddox, Penzo, Petty, Rye, B. Smith, S. Smith, Speaks, and Vaught

This law forbids a physician, except in cases of rape or incest, from performing or attempting to perform an abortion on a pregnant woman who is seeking the procedure solely because the child has Down Syndrome.

Before performing the abortion, a physician is required to ask the pregnant woman if she is aware of any test results, prenatal diagnosis, or any other evidence that the unborn child may have Down Syndrome. And if the pregnant woman is aware of the results or diagnosis, the physician is to inform her of the law and request medical records to determine whether she has previously aborted an unborn child for the same reason.

A physician who knowingly violates this law is guilty of a Class D felony, and will be held liable for damages and have their medical license revoked. But a woman who receives an abortion in violation of this law will not be prosecuted. If the woman is a minor and receives an abortion without being informed of this law, her parent of legal guardian may commence a civil action for any reckless violation and seek both actual and punitive damages.

This law also provides that if it is held invalid as applied to the period of pregnancy prior to viability, then this section shall remain applicable to the period of pregnancy subsequent to viability.

Act 653 (HB1399): An Act To Create The Prohibition Of Public Funding Of Human Cloning And Destructive Embyro Research Act; And For Other Purposes

Sponsored by: Representatives Brown, Lundstrum, Cozart, Payton, Penzo, and Sullivan; Senators Flippo, B. Ballinger, K. Hammer, M. Johnson, Rice, and G. Stubblefield

This law blocks public funds from being used to: (1) finance human cloning or detsructive embryo research; (2) buy, receive, or transfer a human embryo with the knowledge that the embryo will be subject to destructive research; or (3) buy, receive, or transfer gametes with the knowledge that a human embryo will be produced to be used in destructive research.

A person or entity that purposely fails to comply with the provisions of this law is guilty of a Class A misdemeanor, and will be fined a civil penalty in the amount of $1,000. Violation of this law may also be grounds for denying or revoking a license, permit, certificate, or any other form of permission required to practice in a trade, occupation, or profession.

Taxpayers also have standing to sue the state, as well as any official, department, division, agency, political subdivision, or recipient of public funds that is in violation of the law.

Act 700 (SB448): An Act To Require Physicians To Have Certain Qualifications In Order To Perform Abortions; To Repeal The Presumption Viability Of A Fetus At The Twenty-Fifth Week Of Pregnancy; And For Other Purposes

Sponsored by: Senator G. Stubblefield; Representative Barker

This law requires physicians who perform abortions to be licensed to practice medicine in the state of Arkansas as well as to be board-certified or board-eligible in obstretics and gynecology. Anyone in violation of this law is guilty of a Class D felony and may have their professional license revoked, suspended, or nonrenewed.

Under current law, if a fetus is determined to be viable, no abortion is to be performed unless necessary to preserve the life or health of the woman. A “viable fetus” was initially defined as one “which can live outside the womb,” but this law changes it to one for which “there is a reasonable likelihood of sustained survival… outside the body of the mother, with or without artificial life support.”

Act 1057 (HB1856): An Act To Prohibit State Agencies From Consenting To Or Approving The Termination Of Pregnancy For An Individual In The Custody Or Guardianship Of The State And For Expending State Funds For The Purpose Of Terminating A Pregnancy; And For Other Purposes

Sponsored by: Representative Dotson; Senator B. Ballinger

This law forbids state agencies from consenting to or approving the abortion of a pregnant woman in the custody of the state. It also prohibits agencies from authorizing the expenditure of state funds for the purpose of an abortion unless it is to save the life of the pregnant woman, or as required by federal law (with no exceptions given for incest or rape).

If a woman in the custody or guardianship of the state desires to have an abortion, she or her family, or a third-party payer, is responsibile for all costs, including transportation, medical appointments, or any subsequent healthcare service deemed necessary.

Violent Offenses

Act 243 (SB305): An Act Concerning The Offenses Of Aggravated Assault And Aggravated Assault On A Family Or Household Member; And For Other Purposes

Sponsored by: Senator G. Leding; Representative Clowney

While aggravated assault under current law includes actions that obstruct the respiration or circulation of another person's blood by applying pressure to the throat or neck, or by blocking the other person’s nose or mouth, this act extends the offense’s definition to include actions that “[impede] or [prevent] the respiration of another person or the circulation of another person's blood by applying pressure on the chest.”

Act 324 (HB1403): An Act Concerning The Sentence Enhancement Available Against A Person Who Commits Certain Offenses In The Presence Of A Child; To Add Certain Offenses Eligible For The Sentence Enhancement; And For Other Purposes

Sponsored by: Representative McCullough and C. Fite; Senator Bond

> Current law requires that, if someone commits capital murder, murder in the first or second degree, or a felony offense of assault, battery, domestic battering or assault on a family or household member in the presence of a child, they may be subject to an enhanced sentence of an additional one to ten years of imprisonment. This act adds rape, second degree sexual assault, and felony domestic battery or assault on a family or household member to that list.

Act 582 (SB109): An Act To Amend The Offense Of Battery In The First Degree; To Declare Emergency; And For Other Purposes

Sponsored by: Senator Irvin; Representative Murdock

> First degree battery is currently recognized as a Class Y felony if committed against a law enforcement officer acting in the line of duty. This law makes the same true for offenses committed against employees of correctional facilities[37] acting in the line of duty.

Act 783 (HB1610): An Act Amending The Sentencing Range For The Offense Of Battery In The Second Degree; And For Other Purposes

Sponsored by: Representative Gazaway

> The passage of this law amends the charge of second degree battery from a Class D felony to a Class C felony, but only if the person "recklessly causes serious physical injury to another person" while operating or being in actual physical control of a motor vehicle or motor boat while intoxicated or under the influence of alcohol. Otherwise, second degree battery is a Class D felony.

Other Notable Bills

Act 461 (HB1438): An Act Concerning The Offenses Of Voyeurism And Video Voyeurism And Persons Who Commit Repeat Offenses; And For Other Purposes

Sponsored by: Representatives Hawk, Christiansen, Cloud, McCollum, Slape, and Watson; Senator Rapert

> Under current law, a person commits the offense of voyeurism if they personally or through the use of an unmanned vehicle or aircraft, for the purpose of sexual arousal or gratification, look into a "private place... that is a public accommodation… in which a person may reasonably be expected to be nude or partially nude" without the other person's consent.

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[37] An employee of a correctional facility is defined as a "person who is employed by or working under a professional services contract with the Department of Correction or the Department of Community Correction."

This law enhances the charge from a Class A misdemeanor to a Class D felony for subsequent offenses.[38]

Similarly, if a person uses "an unmanned vehicle or aircraft, a camcorder, a motion picture camera, a photographic camera of any type, or other equipment that is concealed, flown operated in a manner to escape detection, or disguised to secretly or surreptitiously," to "videotape, film, photograph, record, or view [the other person by] electronic means," they are guilty of video voyeurism. This law heightens the charge of video voyeurism from a Class D felony to a Class C felony if it is at least the person's third offense.

Act 495 (SB400): An Act Concerning Firearm Noise Suppressors; Concerning Compliance With The National Firearms Act; And For Other Purposes

Sponsored by: Senators B. Ballinger and T. Garner; Representative Gonzales

This law legalizes the use of a firearm specially made or specially adapted for silent discharge.

An individual who uses this type of firearm no longer commits the offense of criminal use of prohibited weapons (which was a Class B felony). If someone sells, barters, leases, gives, rents, or otherwise furnishes this style of weapon to a minor, they are no longer guilty of furnishing a deadly weapon to a minor (which was a Class A misdemeanor). And the same is true for that in the case of "felons" (which was a Class B felony).

Additionally, it is no longer a Class A misdemeanor to sell, rent, or transfer a firearm to any person you know to be prohibited by state or federal law from possessing a firearm.

Act 498 (HB1379): An Act To Reconcile Differences Between The Offenses Of Domestic Battering In The First Degree And Battery In The First Degree; To Increase The Penalties For Battery Offenses Under Certain Circumstances; And For Other Purposes

Sponsored by: Representatives C. Fite and McCullough; Senator Irvin

This law enhances the charge for first degree battery from a Class B felony to a Class Y felony if: (1) the person knowingly causes serious physical injury to any person who is four years old or younger under circumstances manifesting extreme indifference to the value of human life; or (2) the person causes injury to a person with the purpose of seriously disfiguring another person or destroying, amputating, or permanently disabling a member or organ of that other person's body.

The definition of first degree battery is also extended by this act, and if a person knowingly, without legal justification, causes serious physical injury to a person they know to be sixty years of age or older, they will be charged with a Class B felony.[39]

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[38] It is already a Class D felony if the victim is under seventeen years of age and the person who commits the offense holds a position of trust or authority over them.

[39] It is already a Class B felony to knowingly, without legal justification, cause serious physical injury to a person twelve years of age or younger.

The definition of first degree domestic battery is amended similarly with the charge being a Y felony rather than a Class B felony in cases involving serious and permanent disfigurement or a victim who is a family or household member 4 years of age or younger.

Act 505 (HB1550): An Act Concerning The Offense Of Absconding; And For Other Purposes.

Sponsored by: Representative Maddox

A person currently commits the offense of absconding—which is a Class D felony—if they knowingly leave a designated residence while under house arrest or while wearing an electronic monitoring device order as a condition of their release.

This law broadens the definition of absconding to include "not reporting to a designated place or at a designated time in order to submit [oneself] to the custody of the Department of Correction or the Department of Community Correction to serve a period of incarceration they were previously ordered by a court to serve."

Act 611 (HB1720): An Act Concerning Liability For Theft Of Oil And Gas Equipment And Petroleum-Related Property; To Make Organizational Changes And Technical Corrections; And For Other Purposes

Sponsored by: Representatives Jean, Dalby, Magie, Berry, Barker, Miller, Fielding, S. Meeks, and Beck; Senators T. Garner, Maloch, M. Johnson, Rice, Hickey, Irvin, Hill and Rapert

The penalty for theft of oil and gas equipment is not explicitly defined in the theft of property statute. This law makes it a:

(1) Class D felony if the oil and gas equipment is valued less than $1,000
(2) Class C felony if the oil and gas equipment is valued between $1,000 and $5,000
(3) Class B felony if the oil and gas equipment is valued between $5,000 and $25,000

In each circumstance, the person must also transport the oil and gas equipment across state lines to sell or dispose of the property and cause more than $250 in incidental damage to the owner of the property during the commission of the offense. If the theft of oil and gas equipment do not meet these stipulations, it still constitutes theft of property and is punishable with the appropriate penalty as outlined in this law.

Act 672 (HB1754): An Act Concerning The Offense Of Furnishing, Possessing, Or Using Prohibited Articles; And For Other Purposes.

Sponsored by: Representative Gazaway

Under current law, if an incarcerated person knowingly retains a cellular telephone or other communication device, or component of a cellular telephone or other communication device, they commit the offense of possessing a prohibited article, which is a Class B felony. This law extends the definition to include possessing a controlled substance.

If an incarcerated person knowingly delivers a controlled substance to another person, they commit the offense of delivering a prohibited article. Under this law, if the use of the

controlled substance causes death or serious bodily injury to another person, the offense is enhanced from a Class B felony to a Class A felony.

A person may not be convicted of this offense if they have already been charged, tried, or convicted of a possession of delivery offense under the Uniform Controlled Substances Act.

Act 781 (HB1280): An Act Concerning The Offense Of Public Intoxication; And For Other Purposes

Sponsored by: Representative Gazaway

Under current law, public intoxication is a Class C misdemeanor. This Act provides that it is an unclassified misdemeanor if convicted two or more times within 5 years of the current offense.

If the person is convicted of public intoxication three or more times within a five-year period, it is also an unclassified misdemeanor. But, in addition to the $500 fine, they may also be sentenced to probation (which is not to exceed one year) with the condition that they enroll in a treatment or counseling program for alcohol abuse or alcohol dependency. Alternatively, they could be sentenced to no more than thirty days in county jail with an additional probationary period under the same stated conditions, and the total time of jail and probation is not to exceed one year.

Act 930 (SB503): An Act Concerning The Offense Of Physician-Assisted Suicide; And For Other Purposes

Sponsored by: Senators Bledsoe, E. Cheatham, J. Cooper, Flippo, K. Hammer, J. Hendren, B. Johnson, Rapert, G. Stubblefield and D. Wallace; Representative Bentley

This law enhances the penalty of a physician-assisted suicide[40] from a Class C felony to a Class B felony.

Act 1014 (HB1609): An Act To Amend The Law Concerning The Offense Of Possession Of Drug Paraphernalia; And For Other Purposes

Sponsored by: Representative Gazaway

Current law requires that a person who possesses drug paraphernalia and plans to inject, ingest, inhale, store, contain, conceal, or otherwise introduce controlled substance into the human body is charged with a Class A misdemeanor. If the controlled substances are methamphetamine or cocaine, the charge will be a Class D felony.

Similarly, those who use or possess with the intention to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, package, or repackage the drugs are to be charged with a Class D felony. But if the controlled substances are methamphetamine or cocaine, they are guilty of a Class B felony.

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[40] Physician-assisted suicide is defined as a physician or health care provider participating in a medical procedure or knowingly prescribing any drug, compound, or substance for the express purpose of assisting a patient to intentionally end the patient's life.

This law adds heroin and fentanyl to the list of controlled substances (alongside methamphetamine and cocaine) that come with an enhanced penalty, making them—depending on the purpose of the individual—Class D or Class B felonies.

Act 1049 (HB1814): An Act Concerning The Offenses Of Harassing Communications; And For Other Purposes

Sponsored by: Representative Rushing

Under current law, a person commits the offense of harassing communications if, "with the purpose to harass, annoy, or alarm another person," they: (1) communicate[41] with a person anonymously or otherwise; (2) make a telephone call or cause a telephone to ring repeatedly, with no purpose of legitimate communication (regardless of whether a conversation ensues); or (3) knowingly permit a telephone or electronic device to be used in these ways.

This law extends the offense to include: (1) sending threats by telephone, in writing, or by electronic communication[42] to take an unlawful action against another person; (2) anonymously placing two or more telephone calls, at times known to be inconvenient to the other person, in "an offensively [repetitive] manner or without a legitimate purpose of communication which knowingly annoys or alarms the other person"; (3) with purpose to frighten, intimidate or distress emotionally another person; or (4) contacting a person by telephone to falsely claim that someone is ill, has been injured or killed; or (4) communicating without legitimate purpose in a manner the person knows, or reasonably should know, would frighten, intimidate, or cause emotional distress.

[41] This includes communication by telephone, telegraph, mail, email, message delivered to an electronic device, or any other form of written or electronic communication.

[42] This includes text message, social media post, facsimile transmission, email, and internet service.

VIII. NEW OFFENSES

According to a report[43] compiled by The Arkansas Sentencing Commission, nineteen laws creating new offenses. The creation of new crimes will do nothing to address the state's excessive prison population, and likely lead to a heightened number of people entering the system.

Act 503 (HB1506): An Act To Impose A Criminal Penalty For Theft Of Decorative Or Memorial Items From A Cemetery Or Grave Site; And For Other Purposes

Sponsored by: Representative Beck

The theft of decorative or memorial items from a cemetery, graveyard, or a person's grave site is a Class A misdemeanor. This law makes subsequent offenses a Class D felony.

Act 556 (SB318): An Act To Prohibit Unlawful Female Genital Mutilation Of A Minor; To Provide For A Civil Cause Of Action; To Create Awareness Programs Concerning And Statistical Tracking Of Unlawful Female Genital Mutilation; To Decare An Emergency; And For Other Purposes

Sponsored by: Senators B. Davis, T. Garner, B. Ballinger, A. Clark, J. English, Flippo, K. Hammer, Hester, Irvin, B. Johnson, Rice, G. Stubblefield, J. Sturch, and D. Wallace; Representatives Lundstrum, C. Fite, B. Smith, G. Hodges, McCollum, Pilkington, C. Cooper, Cloud, Bentley, Speaks, Cavenaugh, Richmond, Jean, Barker, Petty, Eaves, Jett, Brown, McKenzie, Penzo, J. Mayberry, and Dotson

This law distinguishes female genital mutilation[44] of a minor (with some exceptions[45]) as an offense, and makes it a Class C felony. According to the Sentencing Commission[46], the

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[43] https://bit.ly/2RdtX0j

[44] Female genital mutilation" is defined as a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without limitation: (1) a clitoridectomy; (2) the partial or total removal of the clitoris or the prepuce; (3) the excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora; (4) the infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris; (5) pricking, piercing, incising, scraping, or cauterizing the genital area; or (6) any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

[45] The law excludes medical procedures that are "necessary to preserve or protect the physical health of the minor," and "a sex reassignment procedure as requested by the minor."

[46] https://bit.ly/2GOuMYK

"prohibited conduct created by this act is at least partially covered by the inchoate versions of" first degree battery and first degree domestic battering (also both Class C felonies).

A state agency, board, or commission is required to take disciplinary action against a licensed medical professional who is convicted of unlawful female genital mutilation of a minor, and may take "any measure authorized to discipline the licensed medical professional, including the revocation of any license." Healthcare practitioners of each county are also required to keep annual statistics and report to the Department of Health cases of unlawful female genital mutilation. The Department of Health must compile an annual report of the incidents reported, but will be published with no personal identifying information.

The Department of Health must additionally:

(1) Develop and administer a program of community education, prevention, and outreach activities to address the health risks and emotional trauma inflicted by the practice of unlawful female genital mutilation and to inform communities of the criminal penalties for committing unlawful female genital mutilation; (2) provide teachers and law enforcement with information about the signs, risk factors and criminal penalties associated with unlawful female genital mutilation.
(2) Develop policies and procedures to promote partnerships between The Department of Human Services, The Department of Education, and other governmental entities and nongovernmental organizations to prevent unlawful female genital mutilation and to protect and provide assistance to victims.
(3) Outline best practices for responses to victims of unlawful female genital mutilation
(4) Develop policies and procedures for the training of providers of health services about best practices for responding to victims of unlawful female genital mutilation and to recognize the risk factors.

The statute of limitations does not begin to run until the victim reaches eighteen years of age or when the violation is first reported to a law enforcement agency, whichever occurs first.

Act 677 (SB514): An Act Regulating Telecommunication Service Providers And Third-party Spoofing Providers; To Require That A Telecommunications Service Provider And Third-party Spoofing Provider Are Held Accountable For Certain Activities; To Impose Criminal Penalties On Certain Spoofing Activities; And For Other Purposes

Sponsored by: Senator Dismang; Representative Penzo

This law makes it illegal for a person or entity (with a few exceptions[47]) to use a third party to display, or cause to display, a fictitious or misleading name or telephone number on an Arkansas resident's telephone caller identification service for any purpose. And, in connection with a telecommunication service, it is illegal for a person or entity to cause a caller identification service to transmit misleading or inaccurate caller identification

[47] This law does not apply to law enforcement agencies, protective services shelters or facilities (including domestic violence shelters), or any activity pursuant to a court order that specifically authorizes the use of caller identification manipulation, and telecommunications services are allowed to block or restrict the name or phone number from being displayed by caller identification equipment or devices.

information, unless the caller has a right to use the name and the phone number displayed. But if the caller's intention is to defraud, cause harm, or wrongfully obtain anything of value," it is illegal whether or not they have permission.

Violation of any of these provisions is a Class D felony.

Act 962 (HB1625): An Act To Create The Offenses of Encouraging The Suicide Of Another Person; And For Other Purposes

Sponsored by: Representative Gazaway

In 2017, Michelle Carter was found guilty of involuntary manslaughter for encouraging her boyfriend, Conrad Roy III, to commit suicide by communicating with him over text messages and a phone call. Two years later, in 2019, Michigan—the state in which the trial was held—unveiled a bill called "Conrad's Law" that criminalizes suicide coercion, with jail time up to five years, and some states followed suit by passing similar legislation.

In Arkansas, a person commits this offense if they use persistent language, either spoken or written, that is a proximate cause of the other person committing suicide or attempting to commit suicide that results in serious physical injury. It is considered a Class D felony.

Act 969 (HB1733): An Act Concerning A Threat To Commit An Act Of Mass Violence On School Property; And For Other Purposes

Sponsored by: Representative Gazaway

This law creates the offense of threatening to commit an act of mass violence[48] on school property—which is a Class C felony—if they: (1) knowingly threaten to commit an act of mass violence on school property or at a curricular/extracurricular activity sponsored by a school by any means of communication; or (2) place a person or group of people in a position to reasonably fear for their safety.

Act 1017 (HB1633): An Act To Amend The Law Regarding Witness Intimidation, Retaliation, Tampering With Evidence, Jury Tampering, And Bribery; And For Other Purposes

Sponsored by: Representatives Tosh, A. Collins By: Senator Bond

Through this law, a person commits the offense of tampering if they, after an official proceeding or investigation is pending or about to be instituted, induce or attempt to induce another person to: (1) testify or inform falsely; (2) withhold any unprivileged testimony, information, document, or thing regardless of its admissibility or relevance to an investigation (3) elude legal process summoning that person to testify or supply evidence, regardless of whether the legal process was lawfully issued; or (4) remove themselves from any proceeding or investigation to which they have been summoned. Tampering, in the event that the person testifies or informs falsely, is now increased from a Class A misdemeanor to a Class D felony.

This act also adjusts the charges of several other offenses.

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[48] "Mass violence" means physical injury that a reasonable person would conclude could lead to permanent injury, including without limitation permanent physical injury, permanent mental injury, or permanent emotional injury, or death to two or more people.

Witness bribery and intimidation of a juror, witness, or informant are enhanced from Class C to Class B felonies. Jury tampering is heightened from a Class D to a Class C felony. Retaliation against a witness, informant or juror is heightened from Class D to Class C.

Act 1022 (HB1789): An Act To Amend The Law Concerning The Offense Of Trafficking; To Create An Offense For The Unlawful Solicitation For The Relinquishment Of Parental Rights; And For Other Purposes

Sponsored by: Representatives Penzo, Christiansen, Coleman, C. Cooper, Della Rosa, Hollowell, Lundstrum, Pilkington, Rye, and B. Smith; Senators B. Ballinger and L. Eads

Through this law, the offenses of first and second degree solicitation for the relinquishment of parental rights are created.

Someone commits this offense in the **first degree** if they, in exchange for consent to place their or another person's unborn child up for adoption, offer anything of value not permitted by A.C.A. 9-9-206 to the: (1) biological mother; (2) biological or putative father; (3) spouse, partner, or other relative of the biological mother; or (4) spouse, partner, or other relative of the biological or putative father. It is considered a Class C felony unless the person uses duress, coercion, undue influence, intimidation, threats, fraud, or physical force to persuade one of these individuals, in which case the offense becomes a Class A felony.

A person commits this offense in the **second degree** if they, in exchange for consent of the adoption of the unborn child, offer anything of value not permitted by A.C.A. 9-9-206 to those same four people. It is considered a Class A misdemeanor, but if the person uses duress, coercion, undue influence, intimidation, threats, fraud, or physical force to persuade one of these individuals, the offense becomes a Class D felony.

This law also expands the offense of trafficking of persons. It now includes: (1) recruiting, enticing, soliciting, isolating, harboring, transporting, providing, maintaining, or obtaining a pregnant woman for the purpose of causing them to place their unborn child up for adoption through the use or threatened use of physical force; and (2) benefiting financially or receiving anything of value from participating in any of these acts.

Act 1046 (HB1809): An Act To Create An Additional Term Of Imprisonment For Offenses That Constitute Serious Acts Of Violence Against A Person At A Church Or Other Place Of Worship; And For Other Purposes

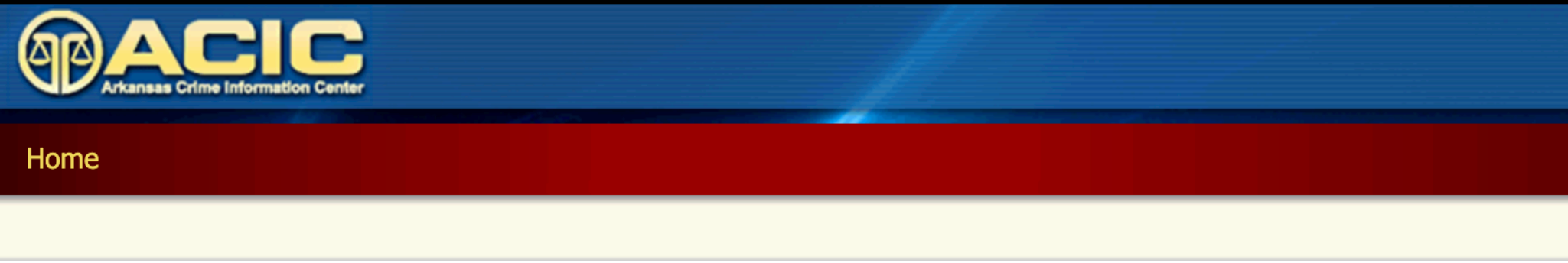
Sponsored by: Representative Love

This law creates an additional term of imprisonment for someone who purposely selected the victim because they were present on the grounds of or in any place of worship, then committed a serious, violent felony against them. The individual will face a minimum of one year but no more than ten years in the Department of Correction (which are consecutive to any other sentence imposed), and is not eligible for early release on parole or community correction transfer during this sentence.

Act 1053 (HB1839): An Act To Establish The Prepaid Mobile Device Protection Act; And For Other Purposes

Sponsored by: Representative L. Johnson

This act makes it unlawful for a person to purchase, refill, or provide funds for the purpose of purchasing or refilling a prepaid mobile device for a minor if they are not related to them. Upon conviction, a person will be fined no less than $100.



IX. SEX OFFENDERS

Individuals who commit criminal offenses of a sexual nature often face continued punishment and post-correctional sanctions after they have served their sentences. These sanctions come with a vast array of collateral consequences including homelessness, emotional harm to family members, loss of employment, decreased support networks, and increased pressure from probation and parole officers.[49] Additional restrictions placed on "sex offenders" make it more difficult to comply with probation and parole requirements and successfully reintegrate into society.

Less Restrictive

Act 587 (SB351): An Act To Amend The Law Concerning The Registration Requirements Of A Sex Offender; And For Other Purposes

Sponsored by: Senator A. Clark

> This law changes the requirements for a sex offender, particularly in regards to adult-minor relationships. If an individual who is no more than three years older than the other person participates in consensual intercourse with that person, who is under eighteen, they no longer have to register as an offender if the court determines that there was no evidence of force, compulsion, threat or intimidation in the commission of the sexual offense.

[49] https://bit.ly/2FOjZgk

More Restrictive

Act 187 (HB1023): An Act Concerning The Entry Upon A School Campus By A Person Who Is Required To Register As A Sex Offender; And For Other Purposes

Sponsored by: Representatives Warren, Dotson, Capp, Cozart, Dalby, Eubanks, Evans, Gazaway, L. Johnson, Maddox, Vaught, and Wing; Senator J. English and B. Ballinger

> This law creates tighter restrictions regarding which individuals required to register as sex offenders can enter onto school campuses. The individual must be a parent, a grandparent, a great-grandparent, a brother, or a sister to be allowed on school property.

Act 262 (SB177): An Act Concerning Sex Offender Registration Requirements; And For Other Purposes

Sponsored by: Senator T. Garner

> Under current law, a person on the sex offender registry must report to local law enforcement upon release from prison as well as reporting on a number of other matters, including a change in name, residency, place of employment, education, higher education, or training. Additionally, when an individual registers as a sex offender, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction must inform them of their legal requirement to report a change in their residency.
>
> Until now, these reporting requirements have ranged anywhere from three to ten days. This law standardizes all of them to five calendar days, in some cases limiting and in other cases lengthening the allotted time.

Act 463 (SB10): An Act Prohibiting A Registered Sex Offender From Participating In Certain Halloween-Related Activities; And For Other Purposes

Sponsored by: Senator T. Garner; Representatives Petty

> This law makes it unlawful for a person who is required to register as a sex offender, and who is assessed as a Level 3 or 4 offender,[50] to distribute candy or any other items to minors, or wear masks or costumes if a minor is present.

[50] The levels of sex offenders under Arkansas law represent the likelihood that the individual with re-offend, with 1 being the least likely and 4 being the most likely.

Act 621 (SB8): An Act To Prohibit A Registered Sex Offender From Recording A Person Under Fourteen (14) Years Of Age In Certain Circumstances; To Prohibit The Unlawful Use Of A Recording Of A Person Under Fourteen (14) Years Of Age Online; And For Other Purposes

Sponsored by: Senator T. Garner; Representatives Pilkington and Petty

> This law makes it unlawful for a person who is required to register as a sex offender, and who is assessed as a Level 3 or 4 offender, to knowingly record a person under fourteen years of age and post the recording on an online social media platform or other internet websites.

Act 800 (SB206): An Act Concerning The Termination Of A Person's Obligation To Register As A Sex Offender; Concerning Lifetime Registration For Certain Repeat Offenders; And For Other Purposes

Sponsored by: Senators Irvin and G. Stubblefield

> Under current law, a person has to register as a sex offender for life if they: (1) were found to have committed an aggravated sex offense; (2) were determined by the court to be a Level 4 offender; (3) pleaded guilty or nolo contendere (no contest), or were found guilty, of a subsequent sex offense under a separate case number; or (4) were convicted of rape by forcible compulsion or a similar offense in another jurisdiction. This act adds another reason an individual would be required to register for life: if they plead guilty or no contest, or are found guilty of failing to comply with registration and reporting requirements three or more times.
>
> However, a sex offender can petition the court to be removed from the registration requirements fifteen years after they first registered in Arkansas. They must have also been reassessed within the past five years of the petition. If they have not, the prosecutor can request it. In the case that the court denies the petition, and the offender does not meet the requirements to no longer be obligated to register,[51] they will have to wait three years to file a new petition.

Act 987 (SB183): An Act To Prohibit Certain Registered Sex Offenders From Holding A Position Of Public Trust; And For Other Purposes

Sponsored by: Senator A. Clark; Representative Rushing

> This law prohibits a person who is required to register as a sex offender, and who is assessed as a Level 2, 3 or 4 offender, to hold a position of public trust.[52]

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[51] The court grants an order terminating an offender's obligation to register upon recieving proof (by a preponderance of the evidence) that: (1) the applicant has been released from prison for fifteen years and not been found guilty of a new sex offense; and (2) is "not likely to pose a threat to the safety of others."

[52] A "position of public trust" is defined as a position that: (1) is in a public agency that provides public safety services (a fire department, law enforcement agency, or emergency medical service agency); or (2) requires the person to have direct physical contact with or to come within the immediate vicinity of a member of the public.

X. TRANSPARENCY

Throughout history, Arkansas has done a poor job of collecting and synthesizing data in helpful and meaningful ways, especially when it comes to the criminal punishment system. For this reason, decARcerate attempted to pass HB1530, which would have required the Arkansas Department of Correction to collect data related to solitary confinement, as well as supported HB1788, which would have required the collection of data related to bail. In the 2019 Legislative Session, little was done to address this problem directly, and continued attacks against the Freedom of Information Act (FOIA) only served to further limit government transparency and accountability.

Freedom of Information Act (FOIA)

Act 810 (SB464): An Act To Ensure The Confidentiality of Certain Procedures Involved In The Execution Of A Person For A Capital Offense; And For Other Purposes

Sponsored by: Senator Hester; Representative Maddox

> In April of 2017, Arkansas Governor Asa Hutchinson scheduled eight executions in ten days —the largest mass execution in over half a century—and successfully put four men to death by lethal injection. There was lots of controversy around this unprecedented rush, particularly because the Arkansas Department of Correction (ADC) had been in breach of contracts put in place by distributor companies to prevent their drugs from being used in executions.
>
> After discovering that state officials had obtained these drugs through "false pretense, trickery, and bad faith," healthcare company McKesson Company[53] sued ADC and a temporary restraining order that prevented Arkansas from using the company's drug in execution was issued. Days later, the state filed an emergency appeal with the Arkansas Supreme Court, who granted its motion and lifted the restraining order.
>
> This new law comes as a direct response to this legal decision, and is particularly problematic because it prevents the public from knowing if the state is carrying out executions in a constitutional matter.

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[53] Distributor of vecuronium bromide—a paralytic and the second drug in Arkansas' three-drug formula.

Act 810 also expands on a law from 2015, which further prohibits the state from releasing documents, records, and information of pharmaceutical companies that "identify" or could "indirectly identify" suppliers and makers of lethal injection drugs.[54] Pursuant to this law, "recklessly" disclosing this information is a Class D felony.

Act 963 (HB1630): An Act To Exempt Certain Information Pertaining To A Law Enforcement Officer From the Freedom Of Information Act of 1967; Concerning Public Record Websites; And For Other Purposes

Sponsored by: Representatives Lundstrum, Bentley, Brown, Christiansen, C. Cooper, Crawford, A. Davis, Evans, Gates, M. Gray, Penzo, Richmond, B. Smith, and Warren; Senator J. Cooper

This law creates the Undercover Law Enforcement Officer Public Records Protection Study, whose stated intent is to "examine and produce a method of protecting the privacy of active and undercover law enforcement officers in their personal lives by exempting certain records regarding [their] personal information from disclosure under the Freedom of Information Act of 1967."

To achieve this purpose, the study is to "review the laws, rules, regulations, and processes currently in place involving [those particular] protections" and "recommend legislative changes, rule changes, regulatory changes, and procedural changes" in order to better ensure that all law enforcement officers maintain their privacy. It will also develop a standardized information sheet to be distributed by county clerks to all law enforcement, encouraging the officers to shield all personal information of themselves and their immediate family.

The study will be conducted by a thirteen member focus group, all appointed by the Speaker of the House.[55] And its meetings—which can be held at any location in the state or by teleconference—are open to the public, and shall be held at least once every three months, until the study expires May 1, 2020.

Act 1012 (HB1417): An Act To Amend The Freedom Of Information Act Of 1967 To Protect The Identity Of Certain Persons Assisting In Criminal Investigations; To Create An Exemption To The Freedom Of Information Act Of 1967; And For Other Purposes

Sponsored by: Representatives Watson, M. Gray, Slape, and Vaught; Senator L. Eads

This law prohibits disclosure of information related to an individual who is currently or has previously assisted a government entity in any investigations (open or closed), specifically if that disclosure could endanger the lives or physical safety of themselves or their family.[56]

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[54] This includes documents and records and "should be construed as broadly as possible."

[55] Three members of the House of Representatives; one circuit court county clerk; one county assessor; one county tax recorder; one representative of the Association of Arkansas Counties; one representative of the banking industry; two representatives from a title company; two active or retired law enforcement officers; one licensed attorney.

[56] Information includes: name, date of birth, physical description, social security number, driver's license number, or other government-issued number specific to them, their work or personal contact information or any other information about the individual that "could reasonably be used to identify the individual."

Act 1028 (HB1928): An Act To Amend the Freedom of Information Act Of 1967; To Require All Open Public Meetings To Be Recorded; And For Other Purposes

Sponsored by: Representatives V. Flowers, Clowney, M. Davis, Della Rosa, Dotson, Glover, Godfrey, Gonzales, M. Hodges, Love, Lowery, Payton, Scott, Sorvillo, Walker, Warren, and Womack; Senators Elliot, Bond, and Hickey

> This law requires all open public meetings,[57] including officially scheduled, special and called meetings, to be recorded.

Data Collection

Act 943 (SB656): An Act To Create The Data-Sharing And Data-Driven Decision-Making Task Force; And For Other Purposes

Sponsored by: Senator J. English

> Given our state's resistance and inability to properly collect and make this data available, the passing of this law is particularly significant. It acknowledges the "lack of a quick and efficient data-driven delivery system," and creates a "data-sharing and data-driven decision-making task force."
>
> The task-force is expected to offer specific solutions and legislation necessary to "create a statewide data sharing system for maintaining and sharing public data that is owned, controlled, collected, or maintained by a state agency" and "recommend funding mechanisms to support the use of statewide data sharing, including data analytics, machine learning, and innovative technologies to link data between agencies." It is made up of six members of the Senate as well as six members of the House,[58] and the meeting times[59] can be found online.

Act 766 (HB1848): An Act Concerning Data Collected By The Arkansas Crime Information Center; And For Other Purposes

Sponsored by: Representative A. Collins

> This law amends what data is collected by the Arkansas Crime Information Center, and must now include the address where a criminal offense occurred.

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[57] Page 6 in the FOIA handbook: The meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties' boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds.

[58] https://bit.ly/30n1N71

[59] https://bit.ly/2QR03Qw

Other Notable Bills

Act 519 (SB266): An Act Concerning The Dissemination Of A Person's Criminal History Information; And For Other Purposes

Sponsored by: Senator Irvin

Under current law, only certain individuals (persons performing research related to the administration of criminal justice, private contractors housing state inmates, and the Governor) have access to a person's criminal history information. Now, after the passing of this law, noncriminal justice agencies are allowed to request this information from the director of the Arkansas Crime Information Center, and it may be made available after a review and express approval by the director if specific requirements are met as to the use and protection of the information.

XI. MISCELLANEOUS

Act 894 (SB950): An Act To Prohibit A Person Convicted Of A Public Trust Crime From Filing As A Candidate For A Constitutional Office Or From Running As A Candidate For A Public Office; And For Other Purposes

Sponsored by: Senator Hester

> This law prohibits a person who pleads guilty or nolo contendere (no contest), or is found guilty, of a public trust crime from filing for, running for, or holding constitutional office, despite whether the offense has been sealed or expunged.
>
> Additionally, a person who has had a public trust crime sealed or expunged is required to disclose the fact and nature of the offense upon inquiry. They are also prohibited from publicly stating or affirming under oath that: (1) the conduct underlying the plea or finding did not occur; (2) record of the underlying plea or finding does not exist; or (3) they have not been convicted of a criminal offense.

Act 1076 (SB411): An Act To Prohibit Municipal Sanctuary Policies; And For Other Purposes

Sponsored by: Senator G. Stubblefield

> This law prohibits a municipality from enacting or adopting a sanctuary policy.[60] If a municipality does enact a sanctuary policy, it will be ineligible for discretionary money provided through funds or grants administered by the state until the policy is repealed or no longer in effect.
>
> Records related to this law, that are created in connection with administrative investigations, are not subject to the Freedom of Information Act.

[60] A "sanctuary policy" is an order, ordinance, or law enforcement policy that: (1) limits or prohibits a municipal official from communicating or cooperating with federal agencies to report the immigration status of a person; (2) grants illegal immigrants the right to lawful status within a city in violation of federal law; (3) violates 8 U.S.C. §1373; (4) restricts any conditions upon the city's compliance with detainers/U.S. Immigration and Customs Enforcement (ICE) to maintain or transfer custody of an immigrant; (5) requires ICE to obtain a warrant before complying with detainers to maintain or transfer custody; or (6) prevents officers from asking a person about their immigration status.