

Criminal - The Beginning and the
End: Pleas, Arraignments, and
Speedy Trial

Hon. Ralph Wilson
Circuit Judge, Osceola

PLEAS, ARRAIGNMENTS, SPEEDY TRIAL, SENTENCING

Judge Ralph Wilson, Jr.

LEARNING OBJECTIVES

As a result of this session, you will be able to properly apply the criminal procedure rules relating to

1. Defendant's First Appearance
2. Pre-Trial Release/Bail Determination
3. Guilty Pleas
4. Speedy Trial
5. Sentencing

COURSE OUTLINE

I. First Appearance—Rule 8, ARCrP

A. Prompt First Appearance—Rule 8.1

1. Violation of Rule does not result in dismissal of charge. However, suppression of evidence flowing from violation of Rule may be proper remedy in certain circumstances. **Britt v. State**, 334 Ark.142, 974 S.W.2nd 436 (1998).

B. Appointment of Counsel—Rule 8.2

C. Nature of First Appearance—Rule 8.3

1. Judge's Obligations

D. Pretrial Release Inquiry—Rules 8.4. 8.5

1. Relevant Factors

E. Time for Filing Formal Charge (60-Day Requirement)—Rule 8.6

II. The Release Decision—Rule 9, ARCrP

A. Defendant's Own Recognizance—Rule 9.1

B. Release on Money Bail—Rule 9.2

1. Options
2. Relevant Considerations
3. Increasing or Decreasing

C. Conditions of Release—Rule 9.3

1. In Writing with Notice of Penalties (Rule 9.4)

D. Violations of Conditions—Rule 9.5

1. See Form: Order for Issuance of Arrest Warrant and Summons/Order for Surety to Appear

E. Revocation of Bail—Rule 9.6

III. Pleas of Guilty and Nolo Contendere—Rules 24, 25, 26, ARCrP

A. Pleading by Defendant, Aid of Counsel-- Rules 24.2, 24.3

1. See Conditional Plea Form, re: Rule 24.3(b)

B. Advice by Court—Rule 24.4

1. Judge's Responsibilities

C. Determining Voluntariness of Plea and Accuracy of Plea (Factual Basis)—Rules 24.5, 24.6

D. Verbatim Record of Proceedings—Rule 24.7

E. Plea Discussions and Agreements—Rules 25.1, 25.2

F. Judge's Responsibilities—Rule 25.3

1. Shall not participate in plea discussions

G. Plea Withdrawal—Rule 26.1

IV. Speedy Trial—Rules 27-30, ARCrP

A. Priorities in Scheduling Criminal Cases—Rule 27.1

B. Continuances—Rule 27.2

C. Time Limitations and Consequences—Rule 28.1

D. Commencement of Time—Rule 28.2

E. Excluded Periods—Rule 28.3

F. Denial of Speedy Trial

1. Dismissal of Charge/Absolute Discharge

G. Waiver—Rule 30.2

V. Sentencing

A. Types of Sentences—From Probation to Death

B. Sentencing Standards—"The Grid"

1. When Applicable

2. Presumptive Sentence

B. Departure From Standards

1. Departure Report

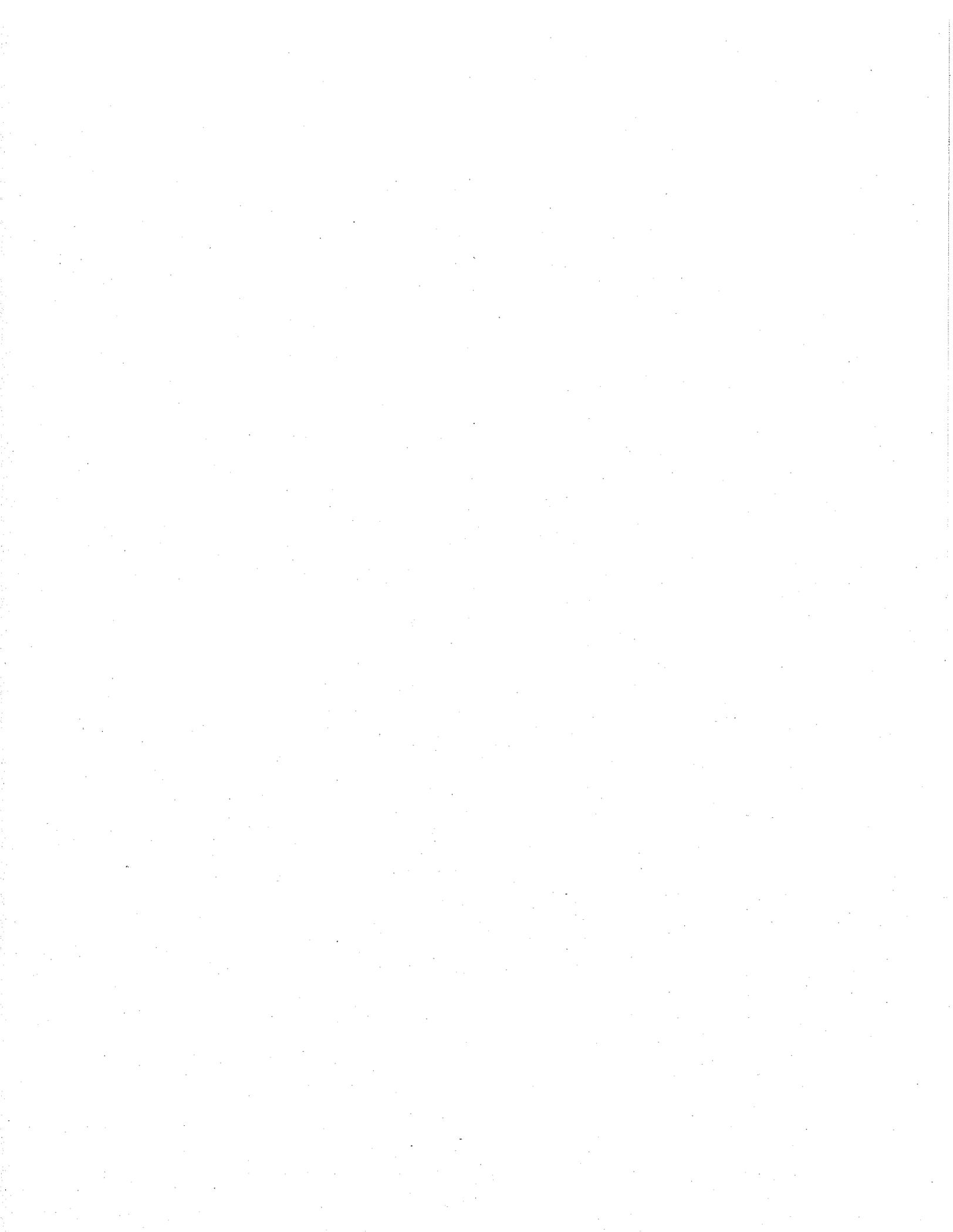
C. Judicial Transfer

D. Enhancement

CRIMINAL RULES TEST
TRUE (T) OR FALSE (F)

- _____ 1. The amount of money bail bond, once set and met, cannot be raised unless the defendant is charged with a new offense.
- _____ 2. A judicial officer can, as a condition of release on bond, require a defendant to report regularly to an officer of the Court.
- _____ 3. An arrested person who is not given a prompt first appearance before a judicial officer is entitled to have the charge dismissed.
- _____ 4. Generally, a plea of guilty must be received from the defendant himself in open Court.
- _____ 5. A defendant may plead nolo contendere (no contest) only with the consent of the Court.
- _____ 6. The Court must ensure a verbatim record of a guilty plea hearing.
- _____ 7. The judge should participate in plea discussions between the prosecutor and defense counsel.
- _____ 8. A motion to withdraw a guilty plea must be made prior to the entry of the written judgment.
- _____ 9. It is the sole responsibility of the Prosecuting Attorney to ensure that criminal trials are set within speedy trial time requirements.
- _____ 10. A defendant incarcerated in prison in this State, pursuant to conviction on another offense, must be brought to trial within 9 months.
- _____ 11. If a Court has a defendant's pre-trial motion under advisement for 45 days, the entire period is an excluded period for speedy trial purposes.
- _____ 12. A defendant incarcerated in the county jail, not brought to trial within 9 months, requires the Court upon proper motion to dismiss the charge.
- _____ 13. An Arkansas defendant has a right to plead guilty.
- _____ 14. All excluded periods under Speedy Trial must be set forth by the Court solely by written Court order.
- _____ 15. In most cases, the time for trial runs from the date of the defendant's arrest.

- _____ 16. Speedy trial is waived by the defendant entering a plea of guilty.
- _____ 17. The excluded period related to defendant's competency runs from the date a mental exam is ordered to the date the resulting mental report is filed.
- _____ 18. A defendant has an absolute right to waive a jury trial, except in capital cases.
- _____ 19. The probability of conviction and the likely sentence are proper factors to consider as to risk of nonappearance is setting money bail.
- _____ 20. A defendant may withdraw his guilty plea as a matter of right before it is accepted by the Court.



V. PRO SE LITIGANTS AND INDIGENTS

CIVIL LITIGANTS

An individual has a right to represent himself in a civil matter. *Stewart v. Hall*, 198 Ark. 493, 129 S.W.2d 238 (1939). A corporation may not. *Ark. Bar Assn. v. Union Nat'l Bank*, 224 Ark. 48, 273 S.W.2d 408 (1955).

Rule 72 of the Arkansas Rules of Civil Procedure requires that the applicant petition for leave to proceed *in forma pauperis*, verified by affidavit in a form approved by the court. The court may by order allow the petition if there is a satisfactory showing of a colorable cause of action.

A sample of an affidavit to proceed *in forma pauperis* is found in the Appendix at a-3.

Suits *in forma pauperis* are not permitted for slander, libel, or malicious prosecution.

CRIMINAL DEFENDANTS

A defendant in a criminal case has a constitutional right to counsel or self representation. *Faretta v. California*, 422 U.S. 806 (1975). However, a defendant who has employed counsel or accepted the appointment of counsel may be found to have waived the right of self representation. *Monts v. Lessenberry*, 305 Ark. 202, 806 S.W.2d 379 (1991). Where a defendant has an attorney, but desires some participation in the trial, that is to be resolved by the sound discretion of the trial judge. *Mosby v. State*, 249 Ark. 17, 457 S.W.2d 836 (1970). The trial court was held not to have refused to allow appellant to proceed *pro se* where appellant never made an unequivocal request to waive counsel. *Collins v. State*, 338 Ark. 1, 991 S.W.2d 541 (1999).

The trial court erred in forcing the appellant to be represented by counsel at trial, and in refusing to allow him to appear *pro se*. The trial court failed to conduct the proper inquiry into the appellant's request to proceed *pro se*, and the case was reversed and remanded for a new trial. *Pierce v. State*, 362 Ark. 491, 209 S.W.3d 364 (2005).

An Affidavit of Financial Inability to Employ Counsel is found in Appendix at a-10.

The right of counsel extends to matters relating to revocation of probation. *Brooks v. State*, 36 Ark. App. 40, 819 S.W.2d 288 (1991).

There exists a reasonable presumption against waiver of an attorney. *Brewer v. Williams*, 430 U.S. 387 (1977). The burden is on the State to show that the waiver was voluntarily and intelligently made. Therefore, it is impermissible to presume waiver from a silent record.

The trial judge is required to inquire of a defendant and the record must affirmatively show that:

- 1) The waiver of counsel is unequivocal and timely;
- 2) The waiver is knowingly and intelligently made; and
- 3) The defendant has not engaged in conduct that would prevent a fair and orderly trial.

Deere v. State, 301 Ark. 505, 785 S.W.2d 31 (1990). To admonish a defendant that he must accept the consequences alone is not sufficient. *Gibson v. State*, 298 Ark. 43, 764 S.W.2d 617 (1989).

A defendant will not be permitted to manipulate the court under the guise of refusing an attorney then demanding an attorney. *Wade v. State*, 290 Ark. 16, 716 S.W.2d 194 (1986).

A Waiver of Counsel Form is found in the Appendix at a-12.

Waiver of counsel was not voluntary when judge permitted defendant to represent himself then ordered he would be tried in shackles without advising him of the dangers of doing so. *Abdullah v. Groose*, 44 F.3d 692 (1995).

Waiver insufficient; standby counsel insufficient. *Bledsoe v. State*, 337 Ark.403, 989 S.W. 2d 510 (1999). See also *Hawkins v. State*, 88 Ark. App. 196, 196 S.W.3d 517 (2004).

Because the trial court allowed standby counsel to remain in the case it did not make even a limited inquiry into the appellant's understanding of the legal process before permitting the appellant to represent himself, which was clearly error. Although the appellant attempted to proceed *pro se*, when it came to the actual presentation of the appellant's case, the appellant relinquished full discretion to standby counsel as to how to conduct significant trial procedures and responsibilities during two of the three days of trial, and the appellant's conviction was affirmed. *Hatfield v. State*, 346 Ark. 319, 57 S.W.3d 396 (2001).

A defendant may not attempt to delay trial by firing his court-assigned attorney. *Hamilton v. Groose*, 28 F.3d 859 (1994).

If a petition on which the petitioner was represented by counsel is denied, counsel shall continue to represent the petitioner for an appeal to the Supreme Court, unless relieved as counsel by the circuit court or the Supreme Court. If no hearing was held or the petitioner proceeded *pro se* at the hearing, the circuit court may at its discretion appoint counsel for an appeal upon proper motion by the petitioner. A.R.Cr.F. 37.3(b)

Where counsel is appointed in municipal court, the appointment continues for purposes

of Ark. R. Crim. P. Rule 8.2 even in circuit court proceedings, unless and until appointed counsel is relieved or new counsel is appointed.

A circuit court has the jurisdiction to deny counsel's motion to withdraw from representing an indigent defendant in a criminal case. *Simpson v. Pulaski County Circuit Court*, 320 Ark. 468, 899 S.W.2d 50 (1995).

Appellant's court appointed trial counsel allowed to withdraw from appeal where appellant's ex-wife and siblings provided funds to hire private counsel, despite the fact that a two-volume trial transcript, costing \$2,748.60, had been provided to appellant at the state's expense. The trial court found that the appellant was still indigent. Appellant's ex-wife and siblings had no obligation to the State to pay the cost of the transcript. *Brewer v. State*, 66 Ark. App. 324, 992 S.W.2d 140 (1999).

ADMONISHMENTS TO POTENTIAL PRO SE DEFENDANTS

I know that you have indicated that you wish to proceed without a lawyer. Before proceeding any further, I want to be sure you fully understand the possible consequences of what you are requesting.

Do you believe you are competent to represent yourself?

How much and what kind of education have you received?

Have you had any previous experience in the criminal justice system?

Have you participated in a trial before?

What, if anything, have you read relating to the law and rules that would cover a trial?

(If at this point you are not convinced that the defendant can competently represent himself, or make a competent decision regarding representation, the inquiry should terminate, and a record should be made as to why you are not allowing a waiver. In addition to lack of competence, the disruptive behavior of the defendant is an adequate basis for withholding leave to proceed pro se.)

The offense(s) that you are charged with are serious crimes under the laws of our state. If found guilty, you may be subject to being sentenced to (fully explain the possible sentences for each of the offenses the defendant is charged with).

I explain this to you not to frighten you, but only to draw to your attention the substantial risks you are subject to. Most people who are charged with serious crimes choose to be represented by counsel. You should know that the Constitution guarantees you, as an accused person, the right to counsel. If you cannot afford a lawyer, I will appoint one to represent you.

A competent lawyer will be knowledgeable of court procedures, rules of evidence and the law that governs this trial. If this case is tried there may be technical issues that may be very difficult for a person without legal training to assess. In addition, even if you did have training in the law, the objective views of a third person with professional experience and training may be something that you would wish to take into consideration.

I don't think you should represent yourself. In my experience, even lawyers who are parties to matters that are going to be tried usually have a lawyer represent them. There is a saying that any person who represents himself has a fool for a lawyer. But the choice is yours.

In any event, if I were to allow you to proceed without a lawyer, you should know that the trial and other related proceedings will take place according to the established laws and rules. The United States Supreme Court has recently drawn to our attention that while a person, who has the competence to make the decision to do so, may proceed without a lawyer, he does not have a constitutional right:

1. To receive personal instruction from the trial judge on courtroom procedure.
2. To have the judge take over the chores for a pro se defendant that would normally be attended to by trained counsel as a matter of course. (E.g., preparation of proper motions, framing questions which comply with the rules of evidence, selecting a jury, preparing jury instructions, etc.)
3. In the event you become confused, or frustrated, that would not be a basis for the interruption of the trial, nor would it be a license for you to disrupt the trial with improper objections or representations.
4. If for any reason you fail to conduct yourself with due respect for the laws and rules governing this trial, or should you become disruptive, it is possible that the permission I have given you to proceed without counsel could be revoked. That result could have a devastating effect on the outcome of your trial.

Do you understand what I have told you?

Is it still your desire to proceed without a lawyer?

(If the answer is yes), I am appointing a lawyer to attend this trial and be available to you as standby counsel. You may consult with him during the course of the trial. You, of course, have the right to proceed alone before me and/or the jury, making whatever presentations or arguments you feel are appropriate and which are consistent with the law and rules governing this trial, and the proper decorum of this court.

WAIVER OF COUNSEL

I understand that under the constitutions and criminal case law of the United States and the statutes and criminal rules of procedure of the State of Arkansas, I am entitled to and will be provided counsel free of charge if I am financially unable to obtain one without causing substantial hardship to myself or to my family.

I understand further that this Court will not continue further in this proceeding until counsel is provided if I request it, and knowing this, I hereby voluntarily and with knowledge of the above rights waive counsel. I further understand that my waiver of counsel at this time shall not preclude me from claiming a right to counsel in future proceedings in this cause, and I have been so informed orally of this by the Court.

DATED AND SIGNED this _____ day of _____, _____.

DEFENDANT

I have questioned the defendant and find that he/she intelligently and knowingly waived counsel and was competent to do so.

JUDICIAL OFFICER



**CONFLICT INQUIRY IN
MULTIPLE REPRESENTATION CASES**

I. OF COUNSEL:

Do you believe that there is any conflict between your clients?

Have you discussed the possibility of conflict with your clients?

Do you know of any reason why the interests of any of your clients would become antagonistic to the interests of the other(s)?

II. OF DEFENDANTS:

Do you understand that you have the legal right to be represented by a lawyer who represents only you?

Do you understand that you have the legal right to be represented by a lawyer whose only interest and loyalty would be to you and you alone?

You should know that during his representation of you:

The lawyer decides what defense will be offered.

He decides which witnesses to call.

He decides which questions to ask witnesses for the state and for the defense.

He decides which arguments to make to the judge and/or to the jury.

He will be advising what plea to enter; whether to seek a jury trial, and whether you should testify.

It could happen that a decision made by a lawyer or the advice he give would be in the best interest of one client, but not of the other (another).

It could be that when a lawyer does his duty for one client, he will not be able to do his best for the other (another).

If it happens that there are any inconsistent evidence, or inconsistent theories of defense, it could affect the outcome of the trial in a way that could hurt you.

I do not say that any of these things which may be negative to your interests will happen in this case, but I want you to be aware of the chance you take when more than one defendant has the same lawyer.

If you have not discussed this with your lawyer, do so and report back to the court.

Information: Ark. Code Ann. §16-85-302.
Setting aside indictment: Ark. Code Ann. §16-85-706.

PLEA OF GUILTY OR *NOLO CONTENDERE*

INFORMATION TO BE OBTAINED FROM DEFENDANT

1. Nature of the charge. Does the defendant understand:
 - a. What he or she is charged with;
 - b. The mandatory minimum sentence, if any;
 - c. The possible maximum sentence;
 - d. The possible consecutive sentences for additional counts;
 - e. The amount of fine that may be imposed, if any;
 - f. What State must prove to be found guilty; and
 - g. Consequences, if any, of a previous conviction.

Ark. R. Crim. P. 24.4.

2. Voluntariness of plea:
 - a. Was violence or physical or mental duress used;
 - b. Was any threat or intimidation made;
 - c. Has anyone made a promise of leniency in return for guilty plea;
 - d. Is defendant suffering from a physical or mental disease or affliction -
 - 1) If "yes," is guilty plea being made in order to receive treatment or medication; and
 - 2) If "yes," is guilty plea being made freely and voluntarily.

Ark. R. Crim. P. 24.5.

3. Accuracy of plea:
 - a. Is guilty plea being made because defendant, in fact, is guilty; and
 - b. What did defendant do.

Ark. R. Crim. P. 24.6.

4. Right to a jury trial. Does the defendant understand:
 - a. That he or she may plead not guilty and be tried by a jury composed of a cross-section of the community;
 - b. Right to a speedy and public trial;
 - c. That all jurors must find defendant guilty beyond a reasonable doubt;
 - d. That defendant is not required to testify and that no one may comment upon defendant not testifying;
 - e. Right to see, hear, and cross-examine witnesses for the prosecution; and
 - f. Right to present and subpoena witnesses on his or her own behalf.

5. Competency of defendant:

- a. Determine whether defendant is under the influence of a drug or alcohol;
- b. Determine whether defendant has ever been a patient in a mental institution or under the care of a psychiatrist;
- c. Determine whether defendant understands everything presently occurring; and
- d. Determine whether it is free and voluntary decision of defendant to enter guilty plea.

6. Plea discussions and plea agreements:

- a. Can original charge be supported by evidence;
- b. Does plea agreement serve the interest of the public in the effective administration of justice;
- c. Did prosecutor reach a plea agreement through discussion with defense counsel;
- d. Is decision to enter plea ultimately that of defendant;
- e. If court has not previously concurred in plea agreement, is defendant aware that:
 - 1) The agreement is not binding on the court;
 - 2) The disposition might be different from that contemplated in the agreement;
- f. If court has previously concurred in agreement, but thereafter decides before sentence not to concur, is defendant given opportunity to withdraw plea.

Ark. R. Crim. P. 25.1; 25.2; 25.3.

7. Competency of counsel:

- a. Is defendant satisfied that his or her attorney has fully considered surrounding facts and possible defenses to charge; and
- b. Is defendant satisfied that his or her attorney has given complete advice.

Ark. R. Crim. P. 24 and 25.

INFORMATION TO BE OBTAINED FROM COUNSEL FOR DEFENDANT

1. Were all allegations read and explained;
2. Were all facts and possible defenses discussed;
3. Is there any meritorious defense;
4. Were all constitutional rights explained;
5. Is plea in accord with facts as related by defendant;

IN THE CIRCUIT COURT OF CRITTENDEN COUNTY, ARKANSAS
x x x DISTRICT
CRIMINAL DIVISION

STATE OF ARKANSAS
vs.

PLAINTIFF)
)
)
DEFENDANT)

Docket No.

CR-_____

GUILTY PLEA STATEMENT

I am the defendant in the above styled case, and represent to the Court:

1. The above is my full and true name. I am mentally competent to make this statement and not under the influence of any drug or alcohol. I understand, should the plea of guilty herein tendered not be accepted by the Court, and trial follow, that admissions made herein will not be admissible against me at trial.

2. I am represented by a lawyer, whose name is: _____.

3. I plead "GUILTY" to the charge(s) of: (a) _____,
(b) _____, (c) _____.

4. I have told my lawyer all the facts and circumstances known to me about the charge(s) set forth in the information. I believe that my lawyer is fully informed on all matters. My lawyer has counseled and advised with me on the nature of each charge and on all possible defenses.

5. I understand that I may plead "Not Guilty" to any offense charged. If I choose to plead "Not Guilty," I am guaranteed the right: (a) to a speedy and public trial by an impartial jury, (b) to compel the State to prove my guilt beyond a reasonable doubt, (c) to see, hear and cross-examine all witnesses called to testify against me, (d) to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor, (e) to have the assistance of a lawyer at all stages of the proceedings, (f) to chose to testify or not, and if I chose not to testify, that fact cannot be held against me, and (g) if I do not have funds, and cannot obtain funds to employ a lawyer of my own choice, the Court will appoint a lawyer to represent me at no cost to me.

6. I also understand that if I plead "Guilty" to the charge(s) against me, the Court is not compelled to accept any sentence recommendation. If the Court does not accept the sentence recommendation, I may chose to, (1) withdraw my plea of "Guilty" and go to trial on a plea of "Not Guilty," or, (2) enter a plea of "Guilty" and have the sentence to be fixed by the Court.

7. My lawyer informed me, and I understand that the punishment provided by law for the offense(s) charged against me is: (a) _____; imprisonment for not less than _____ nor more than _____ years, or a fine not to exceed \$ _____, or by both imprisonment and fine; (b) _____; imprisonment for not less than _____ nor more than _____ years, or a fine not to exceed \$ _____, or by both imprisonment and a fine; (c) _____; imprisonment for not less than _____ nor more than _____ years, or by fine not to

exceed \$ _____, or by both imprisonment and a fine.

8. I state and declare to the Court that no officer, or agent of any law enforcement agency, nor any other person, has abused or mistreated me, or used or threatened any violence or physical or mental duress, or made or threatened any intimidation or threat of any kind in order to get me to plead guilty; or made any promise of any kind to me, or within my knowledge to anyone else, that I will receive a less sentence, or probation, suspension, or any other form of leniency if I plead guilty, except as to the recommendation contained in the sentence agreement.

9. I believe that my lawyer has competently done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVISE, GUIDANCE AND ASSISTANCE THAT MY LAWYER HAS GIVEN ME.

10. I plead "GUILTY" and respectfully request the Court to accept and enter my plea of "GUILTY," because I AM IN TRUTH, AND IN FACT GUILTY AS CHARGED.

11. I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF MY OWN WILL AND ACCORD, with full understanding of all matters set forth in the information and in this statement; this plea of "Guilty" is with the knowledge and consent of my lawyer.

Signed in the presence of my lawyer this _____ day of _____, 19____.

Birthdate: ____/____/____.

Address: _____

Defendant

I have fully explained the within statement to the defendant and truthfully answered any questions he had. He signed the statement in my presence.

Defendant's Lawyer

PLEA AND SENTENCE RECOMMENDATION

The defendant, his lawyer, and the Prosecuting Attorney hereby submit the following Sentence Recommendation to the Court which was reached pursuant to the discussions initiated in this case. All parties agree to fully and fairly inform the Court of all facts and circumstances of the case, including both aggravating and mitigating, and of any prior criminal history of the defendant.

[A] Defendant agrees to plead "Guilty" to: (a) _____,
(b) _____, (c) _____.

[B] The Prosecuting Attorney agrees to recommend:

(Check and complete applicable provisions)

- 1. As to charges, (a), (b), (c), _____ years imprisonment in the Department of Correction with _____ years to be suspended, with credit for _____ jail time.
- 2. As to charges, (a), (b), (c), suspend imposition of sentence of _____ years.
- 3. As to charges, (a), (b), (c), supervised probation for a period of _____ years.
- 4. Pay \$ _____ court costs;
- 5. Pay \$ _____ fine;
- 6. Pay \$ _____ restitution;
- 7. Pay \$ _____ to county to reimburse for cost of court appointed lawyer.
- 8. All moneys to be paid to Sheriff (before release)(\$ _____ now, and balance in (weekly)(monthly) installments of \$ _____, commencing ___/___/___.
- 9. Serve _____ in county jail, with credit for _____ days.
- 10. Perform _____ days community service.
- 11. Serve one day in the Dept. of Correction, transportation furnished by defendant.
- 12. Enroll in, maintain passing grades without unexcused absences or disciplinary problems, and graduate from high school.
- 13. Enroll in and complete a course to obtain a GED.
- 14. Complete a prescribed course of study or vocational training at: _____
- 15. Complete (medical)(alcohol/drug rehabilitation)(psychiatric treatment), at your expense, at: _____
- 16. No agreement has been reached regarding sentence recommendation, and it is understood and agreed that the Court may fix and pronounce sentence within the range provided by law.
- 17. Other: _____
- 18. Restitution, paid to the Sheriff, is owned to the following:
Name: _____, \$ _____;
_____, \$ _____;
_____, \$ _____.

Date: _____

BRENT DAVIS, Prosecuting Attorney

Defendant

Bt _____

Defendant's Lawyer

6. Is plea consistent with advice given; and
7. Does counsel join with defendant in entering plea.

RELEVANT FORMS

In the Appendix, a plea of guilty without recommendation form is at a-16 and a plea of guilty with recommendation form is at a-17.

RELEVANT STATUTES AND RULES

Plea withdrawal: Ark. R. Crim. P. 26.1.
Types of pleas: Ark. Code Ann. §16-85-709.

PLEA OF NOT GUILTY

1. Pretrial release (or bond hearing if defendant in custody);
2. Discovery orders needed;
3. Protective orders needed;
4. Omnibus hearing setting;
5. Pretrial conference setting; and
6. Trial date setting.

RELEVANT RULES

Court may require disclosure by prosecutor: Ark. R. Crim. P. 17.4.
Protective orders: Ark. R. Crim. P. 19.4.
In camera proceedings: Ark. R. Crim. P. 19.6.
Priorities in scheduling cases: Ark. R. Crim. P. 27.1.
Guilty plea withdrawal: Ark. R. Crim. P. 26.1.

PLEA OF NOT GUILTY BY REASON OF MENTAL DISEASE OR DEFECT

1. Lack of fitness to proceed (Ark. Code Ann. § 5-2-302).
 - (a) No person who, as a result of mental disease or defect, lacks capacity to understand the proceedings against him or her or to assist effectively in his or her own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.
 - (b) A court shall not enter a judgment of acquittal on the ground of mental disease or defect against a defendant who, as a result of mental disease or defect lacks the capacity to understand the proceedings against him or her or to assist effectively in his or her own defense.

2. Suspension of all further proceedings when:
 - (a) A defendant charged in circuit court files notice that he or she intends to rely upon the defense of mental disease or defect;
 - (b) There is reason to believe that the mental disease or defect of the defendant will or has become an issue in the cause;
 - (c) A defendant charged in circuit court files notice that he or she will put in issue his or her fitness to proceed; or
 - (d) There is reason to doubt the defendant's fitness to proceed.

Ark. Code Ann. § 5-2-305.

3. Mental-health examination of defendant (Ark. Code Ann. § 5-2-305) and subsequent proceedings (Ark. Code Ann. § 5-2-305- 317).

Form order for mental-health evaluation of defendant and other form orders regarding mental disease or defect are found in the Appendix beginning at a-19.

ELEVANT STATUTES AND RULES

Medical reports: Ark. R. Crim. P. 18.2.

Affirmative defense: Ark. Code Ann. §5-2-312.

Notice to court: Ark. Code Ann. §5-2-304.

Determination of fitness by court: Ark. Code Ann. §5-2-309.

Effect of finding unfitness: Ark. Code Ann. §5-2-310.

Judgment of acquittal: Ark. Code Ann. §5-2-313.

Effect of acquittal: Ark. Code Ann. §5-2-314.

WITHDRAWAL OF GUILTY OR NOLO CONTENDERE PLEA

1. Inform defendant that plea agreement, if any, is not binding on court;
2. If judge previously had concurred in agreement and no longer concurs, inform defendant and permit withdrawal of plea;
3. Is motion timely made;
4. Is withdrawal necessary to correct a manifest injustice;
5. Was defendant denied effective assistance of counsel;
6. Was plea entered or ratified by an unauthorized person;
7. Was plea involuntary;

8. Was plea entered without knowledge of nature of charge;
9. Was plea entered without knowledge that sentence imposed could be imposed;
10. Did prosecutor fail to seek or not oppose concessions made in plea agreement; and
11. Is it fair and just to permit withdrawal.

Ark. R. Crim. P. 25.3 and 26.1.

MOTIONS BEFORE TRIAL

JOINDER OF OFFENSES

1. Are offenses of a similar character, even if not part of a single scheme or plan; or
2. Are offenses based on the same conduct or on a series of acts connected together or constituting parts of a single scheme or plan.

Ark. R. Crim. P. 21.1.

JOINDER OF DEFENDANTS

1. Is each defendant charged with accountability for each offense charged; or
2. Is each defendant charged with conspiracy and one or more of the defendants is also charged with one or more offenses alleged in furtherance of the conspiracy; or
3. Even if conspiracy is not charged and all of the defendants are not charged in each count, is it alleged that the several offenses charged:
 - a. Were part of a common scheme or plan; or
 - b. Were so closely connected in respect to time, place, and occasion that it would be difficult to separate proof of one charge from proof of the other.

Ark. R. Crim. P. 21.2.

CONSOLIDATION BY COURT

The court, on its own motion, may consolidate:

1. Two or more charges; or
2. Two or more defendants; if the offenses or defendants:

IX. TIME AND TYPE OF TRIAL

PRECEDENCE OF FELONY TRIALS

Precedence to be given to felony trials over other matters. Ark. R. Crim. P. 27.1.

PRECEDENCE WHERE VICTIM UNDER AGE OF 14

Statute: Ark. Code Ann. § 16-10-130; Administrative Order No. 5.

TIME FOR FILING FORMAL CHARGE WHERE DEFENDANT IN CUSTODY

Rule: Ark. R. Crim. P. 8.6.

SPEEDY TRIAL

Rules: Ark. R. Crim. P. 28.1 - 30.2.

TIME TO BE TRIED

1. Incarcerated defendant is entitled to release on recognizance if not tried in nine months.
2. Defendant serving sentence for another offense is to be tried within twelve months.
3. Defendant on bond is to be tried within twelve months.

Ark. R. Crim. P. 28.1.

EXCLUDED PERIODS:

- a. Examination and hearing on competency of defendant;
- b. Consideration of pretrial motions up to thirty days;
- c. Congested docket (provided court makes certain written findings and schedules the trial on the next available date permitted by the trial docket);
- d. Continuances requested by the defendant or his attorney (continuance must be to a day certain, and the period of delay is from the date the continuance is granted until subsequent date contained in the order or docket entry granting the continuance);
- e. Continuances requested by prosecutor where evidence is unavailable or issues complex;
- f. Absence of defendant;
- g. Time between dismissal and refileing;
- h. Where trial joined with a codefendant whose time for trial has not run;

- and
- i. Any other period for good cause.

Ark. R. Crim. P. 28.3.

4. Excluded time to be set out in writing by the court by order or docket entry. Ark. R. Crim. P. 28.3.
5. Failure to provide speedy-trial results is bar to prosecution. Ark. R. Crim. P. 30.1.
6. The time for trial runs from the date of the defendant's arrest, or from the date the defendant receives service of the summons. Ark. R. Crim. P. 28.2. It should be noted that Rule 28.2 of the Arkansas Rules of Criminal Procedure was amended in 2007. The Reporter's Note on the amendment provides:

Prior to the 2007 amendment, this rule provided that the time for trial began to run on the date the charge was filed, except when the defendant was held in custody or on bail prior to the filing of the charge, in which case the time for trial began to run on the date of arrest. The 2007 amendment changed the speedy trial start date to the date of arrest, whether the charge is filed before or after that date. The reference to "service of summons" applies to those cases in which the defendant is brought before the court via a summons, rather than an arrest. *See* Rule 6-Issuance of Summons in Lieu of Arrest Warrant. The 2007 amendment applies to prosecutions initiated after the effective date of the amendment. If a person was charged with an offense before the effective date of the amendment, but arrested after the effective date of the amendment, the time for trial begins to run on the date the charge was filed.

7. The motion to dismiss based upon an alleged speedy-trial violation must be made prior to trial. Ark. R. Crim. P. 30.2.
8. Speedy trial is waived by the defendant entering a plea of guilty, but may be able to assert ineffective assistance of counsel. *Clark v. State*, 274 Ark. 81, 621 S.W.2d 857 (1981).
9. Speedy trial applies to a defendant facing multiple charges. *Weaver v. State*, 313 Ark. 55, 852 S.W.2d 130 (1993).
10. The withdrawal of guilty plea has the effect of restarting the time for speedy trial purposes. *Kelch v. Erwin*, 333 Ark. 567, 970 S.W.2d 255 (1998).
11. The excluded period related to defendant's competency runs from the date a mental exam is ordered to the date the resulting mental report is filed. Upon finding of incompetency, the period of time that the defendant was committed to the State Hospital until his competency is restored is properly excludable. *Morgan v. State*, 333 Ark. 294, 971 S.W.2d 219 (1998).

12. For purposes of speedy trial, the time does not commence running until all the elements of the charged offense have been completed. *Cheatham v. State*, 63 Ark. App. 106, 974 S.W. 2d 490 (1998).
13. When an appeal is taken from a municipal court decision to the circuit court, the time for speedy trial begins to run from the day the appeal is filed in circuit court. *Johnson v. State*, 337 Ark. 196, 987 S.W.2d 694 (1999).
14. Appellant waived his right to a speedy trial when he failed to move for a dismissal prior to trial. Appellant announced that he was ready to proceed with trial and participated in jury selection before moving for a dismissal. *Rogers v. State*, 66 Ark. App. 283, 989 S.W.2d 568 (1999).
15. The loss of the State's only witness and consequent lack of evidence constituted good cause to *nolle pros* the case, and the period of time attributable to the *nolle pros* was excluded from the speedy-trial calculation. *Jones v. State*, 347 Ark. 455, 65 S.W.3d 402 (2002).

TRIAL SETTING

1. Trial date shall be set by the court after issues are joined:
 - a. Upon request of any party;
 - b. After reasonable time has elapsed; or
 - c. On court's own motion without request of a party.
2. Precedence shall be given to actions entitled thereto by statute.

Ark. R. Civ. P. 40.

RELEVANT STATUTE

Time for trial after change of venue: Ark. Code Ann. §16-60-206.

CONTINUANCES

Court may, in its discretion, grant continuances:

1. On oral or written motion with or without notice; Ark. R. Civ. P. 40(b).
2. For good cause shown.
3. When any attorney for a party or whose party is:
 - a. A member of the Senate or House of Representative;
 - b. A clerk of either branch of the General Assembly;
 - c. Lieutenant Governor, while presiding as president of the Senate (Ark. R.

RIGHT TO JURY TRIAL/ AMENDMENT 80/ CLEANUP DOCTRINE

A 2001 addition to the Reporter's Notes to Arkansas Rule of Civil Procedure 38 reads as follows:

Article 2, Section 7 of the Constitution of 1874 provides, in part, that "[t]he right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy. . . ." Rule 38 sets out the procedure for asserting the right to a jury trial.

Constitutional Amendment 80, which merged courts of law and equity, did not repeal or modify Article 2, Section 7. As a result of the merger, however, the Supreme Court will be required to determine the parameters of the right to trial by jury in the new system. The possible impact is most clearly seen in cases involving legal issues formerly decided in chancery court under the cleanup doctrine. In this situation, the Supreme Court held that a litigant was not deprived of his or her right to trial by jury because that right is limited to cases that would have been decided "at law" in 1874. By virtue of the cleanup doctrine, which was well-established by 1874, legal issues could be decided by the chancellor without a jury. *Colclasure v. Kansas City Life Ins. Co.*, 290 Ark. 585, 720 S.W.2d 916 (1986).

In a merged system, the question is whether Article 2, Section 7 requires trial by jury with respect to legal issues which, prior to merger, would have been heard in chancery under the cleanup doctrine. Faced with this question after the merger of law and equity in the federal courts, the U.S. Supreme Court held that in a case involving both legal and equitable issues, the former will ordinarily be tried first to the jury in order to avoid the preclusive effect of an initial decision by the court on the equitable issues. See *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962); *Beacon Theatres v. Westover*, 359 U.S. 500 (1958). Federal cases on this point are not binding, because the right to jury trial in state court is governed not by the Seventh Amendment but by state law. *Gasperini v. Center for Humanities, Inc.*, 518 U.S. 415 (1996); *Colclasure v. Kansas City Life Ins. Co.*, *supra*.

CRIMINAL - WAIVER OF JURY TRIAL

1. A defendant with the assent of the prosecutor may waive a jury trial. The trial court has no discretion under Ark. R. Crim. P. 31.1 to accept the defendant's guilty plea to a felony and pass sentence over the prosecuting attorney's objection. See *State v. Smittie*, 341 Ark. 909, 20 S.W.3d 352 (2000). A waiver may be made in a capital case if the death penalty has been waived. Ark. R. Crim. P. 31.4; Ark. Code Ann. § 16-89-108.
2. The waiver may be made in writing or in open court by the defendant. The defendant's attorney may waive a jury trial in open court where the defendant is present and understands his actions. Ark. R. Crim. P. 31.2; *Folt v. State*, 314 Ark. 387, 862 S.W.2d 841 (1993).
3. A waiver of jury may be withdrawn with permission of the court before the jury trial begins. Ark. R. Crim. P. 31.5.

A sample of a jury waiver is found in the Appendix at a-49.

**COURT'S ADMONISHMENT CONCERNING
WAIVER OF JURY TRIAL**

The Court has been advised by your counsel that it is your desire to waive your right to be tried by jury in this case now pending before the Court. Is that correct?

I am required to make you aware that you have an absolute right to be tried by a jury of your peers, for the jury to hear the evidence presented and thereafter for the jury to determine your guilt or innocence, and if they find you guilty beyond a reasonable doubt, to fix your punishment.

Do you understand this right?

If you waive this right to a trial by jury, you should understand that I, and I alone, after hearing the evidence will determine your guilt or innocence, and if I find you guilty beyond a reasonable doubt, I, and I alone, will fix your punishment.

Do you understand? Do you have any questions concerning this right?

Findings: The Court finds that the defendant has knowingly, and intelligently and with full understanding of his right to be tried by a jury, has waived his right to a jury trial in this case.

10. Sufficiency of evidence to support any findings of fact made by court may be raised whether or not party raising question made in the trial court:
 - a. Objected to finding;
 - b. Moved to amend findings; or
 - c. Moved for judgment.

Ark. R. Civ. P. 52.

SENTENCING

1. When a defendant is found guilty by a jury or the court, the following dispositions may be utilized:
 - a. Death or life imprisonment (Ark. Code Ann. §§5-4-601-608);
 - b. Imprisonment (Ark. Code Ann. §§5-4-401-404);
 - c. Pay a fine (Ark. Code Ann. §§5-4-201-204);
 - d. Make restitution (Ark. Code Ann. §5-4-205);
 - e. Probation (Ark. Code Ann. §§5-4-301-311);
 - f. Suspended imposition of sentence (Ark. Code Ann. §5-4-104); and
 - g. Send or transfer to regional punishment facilities. (Ark. Code Ann. §§16-93-1206).

Ark. Code Ann. §5-4-104.

2. The court may not impose a sentence for a specific number of years, and then suspend a portion of the sentence. This practice is referred to as "suspended execution of sentence." *Chadwell v. State*, 80 Ark. App. 132, 91 S.W.3d 530 (2002); *State v. Stephenson*, 340 Ark. 229, 9 S.W.3d 495 (2000); Ark. Code Ann. § 5-4-104 (e)(1)(B)(ii).

SENTENCING STANDARDS

1. The court may apply sentencing standards in all cases of felonies committed after January 1, 1994 where:
 - a. The defendant pleads guilty;
 - b. The plea is negotiated;
 - c. The defendant is found guilty by the court;
 - d. The jury fails to agree on punishment; or
 - e. The jury's sentence is found by the court to be illegal.

Ark. Code Ann. § 5-4-103.

2. The standards do not apply to:

- a. Misdemeanors;
 - b. Probation-revocation proceedings;
 - c. Felonies committed before January 1, 1994;
 - d. Findings of guilty by a jury; or
 - e. Convictions of capital murder.
3. The presumptive sentence is arrived at by determining the offense seriousness level (Ark. Code Ann. §16-90-803(b)(1)) and the offender history score (Ark. Code Ann. §16-90-803(b)(2)).

The Offense Seriousness Ranking Table and the Criminal History Worksheets and the Sentencing Grid are published by the Arkansas Sentencing Commission.

Ark. Code Ann. §16-90-803.

DEPARTURE FROM STANDARDS

1. The court may depart from the presumptive sentence without providing a written justification.
2. If the departure is agreed upon by the parties (negotiated plea), written reasons must be provided by the parties to the court. If the court rejects the agreement, the defendant may withdraw his plea.

Ark. Code Ann. §16-90-804.

ENHANCEMENTS

HABITUAL OFFENDERS

1. Habitual offenders, that is a person with two or more prior convictions, may receive higher mandatory-minimum sentences.
2. Proof of prior convictions is determined by the trial judge. Ark. Code Ann. §§5-4-501; 5-4-502.
3. Any person who is found guilty or pleads guilty or *nolo contendere* of murder in the first degree, kidnapping (as a Y felony), aggravated robbery, rape, manufacture of methamphetamine or possession of drug paraphernalia with the intent to manufacture methamphetamine, or causing a catastrophe shall not be eligible for parole until the person serves 70% of the term of imprisonment to which he or she is sentenced. Ark. Code Ann. §16-93-611.

The sentencing judge may waive the 70% service of sentence requirement where the defendant was a juvenile at the time of the offense and was merely an accomplice. Ark. Code Ann. §16-93-611.

4. Habitual offenders of violent crimes in Arkansas must serve mandatory sentences of life in prison for committing two or more serious violent felonies. Ark. Code Ann. §5-4-501.
5. Parole eligibility of offenders of serious violent felonies is limited until after age 55. Ark. Code Ann. §16-93-1302.

See generally Arkansas Model Criminal Instructions (AMCI 2d) 8200.

DOMESTIC ABUSE

1. Any person, who commits a felony offense involving assault, battery, domestic battering, or assault on a family member or household member as provided in Ark. Code Ann. §§ 5-13-201, *et seq.* or 5-26-303-311, may be subject to an enhanced sentence of an additional term of imprisonment of not less than one year and not more than ten years if the offense is committed in the presence of a child.
2. To seek enhancement, the prosecuting attorney must notify the defendant in writing and advise the defendant that he or she is subject to the enhanced penalty. The notice may be included in the criminal information or indictment.
3. The enhanced portion of the sentence is consecutive to any other sentence imposed.
4. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-4-702.

TERRORISM

1. Any person who is found guilty of or who pleads guilty or *nolo contendere* to terrorism, Ark. Code Ann. § 5-54-205, may be subject to an enhanced sentence of an additional term of imprisonment of ten years if the person's acts caused serious physical injury to a law enforcement officer, firefighter, or emergency service technician providing emergency assistance at the scene of the act of terrorism.
2. The enhanced portion of the sentence is consecutive to any other sentence imposed.
3. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-54-206.

MANUFACTURE OF METHAMPHETAMINE IN THE PRESENCE OF CERTAIN PERSONS

1. Any person who is found guilty of or who pleads guilty or *nolo contendere* to manufacture of methamphetamine, Ark. Code Ann. § 5-64-401(a)(1), or possession of drug paraphernalia with the intent to manufacture methamphetamine, Ark. Code Ann. § 5-64-403(c)(5), may be subject to an enhanced sentence of an additional term of imprisonment of ten years if the offense is committed
 - a. In the presence of a minor, elderly person, or incompetent person who may or may not be related to the person;
 - b. With a minor, elderly person, or incompetent person in the same home or building where the methamphetamine was being manufactured or where the drug paraphernalia to manufacture methamphetamine was in use or was in preparation to be used; or
 - c. With a minor, elderly person, or incompetent person present in the same immediate area or in the same vehicle at the time of the person's arrest for the offense.
2. "Elderly person" means any person seventy years of age or older
3. "Incompetent person" means any person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated.
4. "Minor" means any person under eighteen years of age.
5. The enhanced portion of the sentence is consecutive to any other sentence imposed.
6. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-64-407.

DRUG OFFENSES THAT OCCUR IN PROXIMITY TO CERTAIN LOCATIONS

1. Any person who commits an offense under Ark. Code Ann. § 5-54-401(a) by selling, delivering, possessing with intent to deliver, dispensing, manufacturing, transporting, administering, or distributing a controlled substance may be subject to an enhanced sentence of an additional term of imprisonment of ten years if the offense is committed on or within one thousand feet of the real property of:
 - a. A city or state park;

- b. A public or private elementary or secondary school, public vocational school, or private or public college or university;
 - c. A designated school bus stop as identified on the route list published by a public school district each year;
 - d. A skating rink, Boys Club, Girls Club, YMCA, YWCA, or community or recreation center;
 - e. A publicly funded and administered multifamily housing development;
 - f. A drug or alcohol treatment facility;
 - g. A day care center;
 - h. A church; or
 - i. A shelter as defined in Ark. Code Ann. § 9-4-102.
2. The enhanced portion of the sentence is consecutive to any other sentence imposed.
 3. A person, who receives an enhanced sentence, is not eligible for early release on parole or community correction transfer during the enhanced portion of the sentence.

Ark. Code Ann. § 5-64-411.

USE OF A FIREARM WHILE COMMITTING OR ESCAPING FROM COMMITTING A FELONY

1. Any person convicted of any offense which is classified as a felony, who employed any firearm of any character as a means of committing or escaping from the felony, may be subjected to an additional period of confinement in the state penitentiary for a period not to exceed fifteen years.
2. The period of confinement imposed shall be in addition to any fine or penalty provided by law as punishment for the felony itself.
3. Any additional prison sentence imposed shall run consecutively to any period of confinement imposed for conviction of the felony itself.
4. A separate appeal may be taken to the Arkansas Supreme Court from the imposition of the enhanced sentence and any appeal shall be in the manner prescribed for appellate review of conviction of criminal offenses in general.
 - a. The only question to be decided upon the separate appeal shall be whether the evidence warrants a finding that the defendant actually employed a firearm in the commission of, or escape from commission of, the felony for which he or she stands convicted.
 - b. Any reversal of a defendant's conviction for the commission of the felony shall automatically reverse the prison sentence which may be imposed

under this section.

5. Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, except as provided below, any person who is sentenced to the enhanced sentence is not eligible for parole or community correction transfer until the person serves:
 - a. Seventy percent of the enhanced sentence if the underlying felony was any of the following:
 - i. Murder in the first degree (Ark. Code Ann. § 5-11-102);
 - ii. Kidnapping that is a Class Y felony (Ark. Code Ann. § 5-11-102);
 - iii. Aggravated robbery (Ark. Code Ann. § 5-12-103);
 - iv. Rape (Ark. Code Ann. § 5-14-103); or
 - v. Causing a catastrophe (Ark. Code Ann. § 5-38-202(a)).
 - b. Except as provided below, seventy percent of the enhanced sentence if the underlying felony was any of the following:
 - i. Manufacture of methamphetamine (Ark. Code Ann. § 5-64-401(a)(1)); or
 - ii. Possession of drug paraphernalia with the intent to manufacture methamphetamine (Ark. Code Ann. § 5-64-403(c)(5)).
 - c. The person is eligible for parole or community correction transfer if he or she serves at least fifty percent of the enhanced sentence for the offenses of the intent to manufacture methamphetamine or possession of drug paraphernalia with the intent to manufacture methamphetamine with credit for the award of meritorious good time under Ark. Code Ann. § 12-29-202, unless the person is sentenced to a term of life imprisonment. The time shall not be reduced to less than fifty percent of the person's original enhanced sentence; or
 - d. Either one-third or one-half of the enhanced sentence with credit for meritorious good time and depending on the seriousness determination made by the Arkansas Sentencing Commission if the underlying felony was any felony not listed above.
6. The sentencing court may waive the minimum-imprisonment requirements outlined above if all of the following circumstances exist:
 - a. The defendant was a juvenile when the offense was committed;
 - b. The defendant was merely an accomplice to the offense; and
 - c. The offense was committed on or after the effective date of this act.

Ark. Code Ann. § 16-90-120.

COMMUNITY PUNISHMENT

1. Sentences to community punishment include:
 - a. Probation;
 - b. Economic-sanctions programs;
 - c. Home-detention programs;
 - d. Community-service programs;
 - e. Work-release programs;
 - f. Restitution programs;
 - g. Regional-punishment facilities;
 - h. Boot camps;
 - i. Drug/alcohol treatment services;
 - j. Educational programs;
 - k. Vocational programs;
 - l. Job-skills programs;
 - m. Mental health treatment services; and
 - n. Parole and post-prison supervision.

Ark. Code Ann. §16-93-1202.

AS CONDITION OF SIS OR PROBATION

1. A defendant may be sentenced to a regional punishment facility as a condition of SIS or probation:
 - a. If the offense is a target offense, as defined in Ark. Code Ann. §16-93-1202(L);
 - b. For a designated period of time commensurate with goals of program.
2. Jurisdiction over the defendant remains with the court.

Ark. Code Ann. §16-93-1206(b)(1).

JUDICIAL TRANSFERS

1. The court may commit a defendant to the Department of Correction but specify that the defendant is to be judicially transferred to the Department of Community Correction.
2. The defendant will be transported directly to a regional-punishment facility.
3. The maximum sentence for a judicial transfer is 24 months.

Ark. Code Ann. §§16-93-1206(b)(3); 12-27-127.

CRITERIA TO BE CONSIDERED BY COURT

1. If crime is not capital murder, treason, Class Y felony, murder in the second degree, first-degree rape, kidnapping or aggravated robbery, DWI or engaging in continuing-criminal enterprise and the defendant is not a habitual offender, the court may suspend imposition of sentence or place defendant on probation. In making this determination, the court shall consider whether:
 - a. There is undue risk that during the period of a suspension or probation the defendant will commit another offense;
 - b. The defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
 - c. Suspension or probation will discount the seriousness of the defendant's offense; or
 - d. The defendant has the means available or is so gainfully employed that restitution or compensation to the victim of his or her offense will not cause an unreasonable financial hardship and will be beneficial to the rehabilitation of the defendant.

2. The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of suspension or probation:
 - a. The defendant's conduct neither caused nor threatened serious harm;
 - b. The defendant did not contemplate that his or her conduct would cause or threaten serious harm;
 - c. The defendant acted under strong provocation;
 - d. There were substantial grounds tending to excuse or justify the defendant's conduct, though failing to establish a defense;
 - e. The victim of the offense induced or facilitated its commission;
 - f. The defendant has compensated or will compensate the victim of the offense for the damage or injury that he or she sustained;
 - g. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before commission of the present offense;
 - h. The defendant's conduct was the result of circumstance unlikely to recur;
 - i. The character and attitudes of the defendant indicate that he or she is unlikely to commit another offense;
 - j. The defendant is particularly likely to respond affirmatively to suspension or probation;
 - k. The imprisonment of the defendant would entail excessive hardship to him or her or his or her dependents;
 - l. The defendant is elderly or in poor health; and
 - m. The defendant cooperated with law enforcement authorities in his/her own prosecution or in bringing other offenders to justice.

BIFURCATION OF CRIMINAL TRIALS

1. For jury trials, bifurcation applies in all cases where defendant is charged with a felony and found guilty of any offense. Ark. Code Ann. §5-4-103(a).
2. For bench trials, bifurcation applies in all cases, felony or misdemeanor, where:
 - a. Defendant pleads guilty;
 - b. Defendant's guilt is tried by court;
 - c. Jury fails to agree on punishment;
 - d. Prosecutor and defendant agree court may fix punishment; or
 - e. Jury sentence is found by court to be illegal.

Ark. Code Ann. §5-4-103(b).

3. For combination jury/bench trials, bifurcation applies as follows:
 - a. After jury finds guilt, defendant may waive jury sentencing if prosecutor agrees and court consents. Ark. Code Ann. §16-97-101(5).
 - b. After guilty plea, defendant may be sentenced by jury with agreement of prosecutor and consent of court. Ark. Code Ann. §16-97-101(6).

BIFURCATED SENTENCING PROCEDURE

1. Jury Trials

- a. Jury hears all evidence relevant to every charge and retires to reach verdict.
- b. If defendant found guilty of one or more charges, the jury shall then hear additional evidence relevant to sentencing. Evidence introduced in the guilty phase can be considered but need not be re-introduced.
- c. After introduction of evidence relevant to sentencing, if any, instructions on law and argument, the jury shall retire again and determine sentence within the statutory range.
- d. Court has discretion to instruct jury that counsel may argue alternative sentences for which the defendant may qualify. The jury may, at its discretion, recommend an alternative sentence, however, this is not binding on the court.

Ark. Code Ann. §16-97-101.

2. Sentencing By the Court

- a. Party may present evidence relevant to sentencing and opposing party may offer rebuttal.
- b. If a sentencing hearing is not requested, court may order one or a pre-sentence investigation pursuant to Ark. Code Ann. §5-4-102.
- c. Court may hear or request argument following a hearing or pre-sentence investigation.

Ark. Code Ann. §16-97-102.

EVIDENCE RELEVANT TO SENTENCING

Evidence relevant to sentencing either by court or jury may include but not be limited to:

1. Applicable law on parole, meritorious good time, or transfer;
2. Prior felony and misdemeanor convictions of defendant. May advise jury as to nature, date, time, and place sentence received and date of release from confinement or supervision from all prior offenses;
3. Prior judicial determinations of delinquency in juvenile court subject to limitations in Ark. Code Ann. §16-97-103(3); *July Clem A Mosk (?)*
4. Victim impact evidence or statement;
5. Relevant character evidence;
6. Evidence of aggravating and mitigating circumstances;
7. Evidence relevant to guilt presented in first stage;
8. Evidence held inadmissible in first stage may be submitted for consideration in second stage if basis for exclusion did not apply to sentencing; and
9. Rebuttal evidence.

Ark. Code Ann. §16-97-103.



SERIOUSNESS LEVEL 1
Effective date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	AS	AS	AS	PEN 9 RCF* AS	PEN 24 RCF* AS	PEN 30 RCF* AS
Minimum Time Served Prior to Transfer Eligibility				PEN 1.50	PEN 4	PEN 5
Presumptive Range (Prior to July 1, 2005)				PEN 8.55- 9.45	PEN 22.80- 25.20	PEN 28.50- 31.50

AS = Alternative Sanctions, RCF = Regional Correctional Facilities

PEN = Penitentiary Only

ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Level 1 offenses (not all offenses listed, see table for other offenses): See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 37 203	D	<u>Defrauding Secured Creditors</u>	
5 37 211	D	<u>Defrauding Judgment Creditors</u>	
5 37 525	D	<u>Defrauding Material Man > \$5000</u>	
5 41 103	D	<u>Computer Fraud</u>	
5 56 102	D	<u>Illegal Use of Food Coupons</u>	
5 56 103	D	<u>Illegal Presentation of Food Coupons</u>	
5 66 103	U	Keeping a Gambling House	[See statute for penalty range]

Transfer Eligibility - one third of time imposed minus good time of up to one half, i.e. one sixth of time imposed if offender earns maximum good time

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual	Habitual	Habitual	Habitual
		§(a)	§(b)	§(c)	§(d)
D	0- 6	0-12	0-15	n/a	20-40

SERIOUSNESS LEVEL 2
Effective date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	RCF* AS	RCF* AS	RCF* AS	PEN 18 RCF* AS	PEN 24 RCF* AS	PEN 42 RCF* AS
Minimum Time Served Prior to Transfer Eligibility				PEN 3	PEN 4	PEN 7
Presumptive Range (Prior to July 1, 2005)				PEN 17.10- 18.90	PEN 22.80- 25.20	PEN 39.90- 44.10

AS = Alternative Sanctions, RCF = Regional Correctional Facilities
PEN = Penitentiary Only
ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Level 2 offenses (list not complete, see table for other offenses): See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 13 301	D	<u>Terroristic Threatening I</u>
5 38 204	D	<u>Criminal Mischief II</u>
5 41 206	D	<u>Computer Password Disclosure</u>
5 54 111	D	<u>Escape II</u>
5 73 103	D	<u>Possession Firearm by Certain Persons</u>
27 53 101	D	<u>Failure to Stop After Accident With Injury or Death</u>

Transfer Eligibility - one third of time imposed minus good time of up to one half, i.e. one sixth of time imposed if offender earns maximum good time

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual	Habitual	Habitual	Habitual
		§(a)	§(b)	§(c)	§(d)
D	0- 6	0-12	0-15	n/a	20-40

SERIOUSNESS LEVEL 3
Effective date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	RCF* AS	RCF* AS	PEN 18 RCF* AS	PEN 30 RCF* AS	PEN 42 RCF* AS	PEN 60 RCF* AS
Minimum Time Served Prior to Transfer Eligibility			PEN 3	PEN 5	PEN 7	PEN 10
Presumptive Range (Prior to July 1, 2005)			PEN 17.10- 18.90	PEN 28.50- 31.50	PEN 39.90- 44.10	PEN 57-63

AS = Alternative Sanctions, RCF = Regional Correctional Facilities
PEN = Penitentiary Only
ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Level 3 offenses (list not complete, see table for other offenses). See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 13 204	D	<u>Aggravated Assault</u>
5 26 401	D	<u>Non-Support</u>
5 36 103	C	<u>Theft of Property</u>
5 36 104	C	<u>Theft of Services</u>
5 36 106	C	<u>Theft by Receiving</u>
5 36 115	C	<u>Theft of Leased/Rented Property</u>
5 37 201	C	<u>Forgery II</u>
5 37 207	C	<u>Fraudulent Use of a Credit Card</u>
5 37 302	C	<u>Hot Check/Personal Services</u> (\$200 - \$2500)
5 38 203	C	<u>Criminal Mischief I</u>
5 39 202	D	<u>Breaking or Entering</u>
5 64 401	C	<u>Possession Control/Counterfeit Subst W/O Prescription (Third Offense)</u>
5 64 401.7	C	<u>Manufacture/Delivery/Possession</u> <u>Marijuana <10 lbs</u>
5 65 103	U	<u>DWI, Violation of Omnibus Act</u> [See statute for penalty range] <u>(Fourth Offense)</u> [RCF by judicial transfer only]

Transfer Eligibility - one third of time imposed minus good time of up to one half, i.e. one sixth of time imposed if offender earns maximum good time

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
C	3-10	3-20	3-30	n/a	25-40
D	0-6	0-12	0-15	n/a	20-40

SERIOUSNESS LEVEL 4
Effective date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	RCF* AS	PEN 18 RCF* AS	PEN 30 RCF* AS	PEN 54 RCF* AS	PEN 72 RCF* AS	PEN 96
Minimum Time Served Prior to Transfer Eligibility		PEN 3	PEN 5	PEN 9	PEN 12	PEN 16
Presumptive Range (Prior to July 1, 2005)		PEN 17.10- 18.90	PEN 28.50- 31.50	PEN 51.30- 56.70	PEN 68.40- 75.60	PEN 91.20- 100.80

AS = Alternative Sanctions, RCF = Regional Correctional Facilities
 PEN = Penitentiary Only
 ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Level 4 offenses (list not complete, see table for additional offenses). See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 10 105	C	Negligent Homicide
5 10 105	D	Negligent Homicide
5 11 103	C	False Imprisonment I
5 13 202	D	Battery II
5 14 126	C	Sexual Assault, Third Degree
5 53 102	C	<u>Perjury</u>
5 54 110	C	Escape I
5 64 401.4	C	<u>Possession of Controlled Substance Schedule I/II</u>
5 64 401.5	C	<u>Manufacture/Delivery/Possession Marijuana > 10 lbs < 100 lbs</u>

Transfer Eligibility - one third of time imposed minus good time of up to one half, i.e. one sixth of time imposed if offender earns maximum good time

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
C	3-10	3-20	3-30	n/a	25-40
D	0- 6	0-12	0-15	n/a	20-40

ARKANSAS SENTENCING STANDARDS GRID
SERIOUSNESS LEVEL 5
 Effective January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	RCF* AS	PEN 36 RCF* AS	PEN 54 RCF* AS	PEN 72 RCF* AS	PEN 120 RCF* AS	PEN 180
Minimum Time Served Prior to Transfer Eligibility		PEN 6	PEN 9	PEN 12	PEN 20	PEN 30
Presumptive Range (Prior to July 1, 2005)		PEN 34.20- 37.80	PEN 51.30- 56.70	PEN 68.40- 75.60	PEN 114-126	PEN 171-189

AS = Alternative Sanctions, RCF = Regional Correctional Facilities

PEN = Penitentiary Only

ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Level 5 offenses (list not complete, see table for additional offenses). See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 26 202	C	Incest
5 27 605	C	Computer Exploitation of a Child - First Degree
5 36 103	B	<u>Theft of Property</u>
5 36 104	B	<u>Theft of Services</u>
5 36 106	B	<u>Theft by Receiving</u>
5 37 201	B	<u>Forgery I</u>
5 37 302	B	<u>Hot Check/Personal Services (Over \$2500)</u>
5 38 301	B	Arson (Less Than \$20,000 Damage)
5 39 201	C	<u>Burglary - Commercial</u>
5 54 105	B	Hindering Apprehension or Prosecution
5 54 120	C	<u>Failure to Appear</u>

Transfer Eligibility - one third of time imposed minus good time of up to one half, i.e. one sixth of time imposed if offender earns maximum good time

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
B	5-20	5-30	5-40	40-80 or life	30-60
C	3-10	3-20	3-30	n/a	25-40

SERIOUSNESS LEVEL 6
Effective date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	PEN 24 RCF* AS	PEN 42 RCF* AS	PEN 66 RCF* AS	PEN 108 RCF* AS	PEN 156	PEN 240
Minimum Time Served Prior to Transfer per Act 1268 of 1999	PEN 16.80	PEN 29.40	PEN 46.20	PEN 75.60	PEN 109.20	PEN 168
Minimum Time Served Prior to Transfer Eligibility	PEN 4	PEN 7	PEN 11	PEN 18	PEN 26	PEN 40
Presumptive Range (Prior to July 1, 2005)	PEN 22.80- 25.20	PEN 39.90- 44.40	PEN 62.70- 69.30	PEN 102.60- 113.40	PEN 148.20- 163.80	PEN 228-252

AS = Alternative Sanctions, RCF = Regional Correctional Facilities

PEN = Penitentiary Only

ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Act 1268 of 1999 Crime
5-64-403

B

Use of Paraphernalia to Manufacture Methamphetamine

Release Eligibility - seventy percent (70%) of time imposed with credit for good time, including Regional Correctional Facilities (see Act 1034 of 2005).

Level 6 offenses (list not complete, see table for additional offenses): See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 10 104	C	Manslaughter
5 11 102	B	Kidnapping
5 14 125	B	Sexual Assault, Second Degree
5 27 303	B	Engaging Child in Sex Explicit (Subsequent Offense)
5 27 402	B	Employ/Authorize Child < 17 Sexual Performance -(Subsequent Offense)
5 27 403	B	Produce/Direct Sexual Performance Child < 17
5 28 103	B	Abuse of Adults
5 39 201	B	<u>Burglary - Residential</u>
5 51 201	A	Treason
5 64 401	B	<u>Possession/Etc. Counterfeit Substance w/Intent - Schedule I - II</u>
5 64 401.4	B	<u>Manufacture/Etc. Controlled Substance Schedule I/II/III > 400 gms</u>
5 71 229	B	Stalking First Degree
5 74 104	B	Engaging in Continuing Gang Organize or Enterprise (First Degree)
5 74 104	A	Engaging in Continuing Gang Organize or Enterprise (Second Degree)

Transfer Eligibility - one third of time imposed minus good time of up to one half, i.e. one sixth of time imposed if offender earns maximum good time

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
A	6-30	6-50	6-60	n/a	40-life
B	5-20	5-30	5-40	40-80 or life	30-60
C	3-10	3-20	3-30	n/a	25-40

SERIOUSNESS LEVEL 7
Effective Date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	PEN 42 RCF* AS	PEN 54 RCF* AS	PEN 84 RCF* AS	PEN 120	PEN 160	PEN 300
Minimum Time Served Prior to Transfer per Act 1135 of 1997	PEN 29.40	PEN 37.80	PEN 58.80	PEN 84	PEN 112	PEN 210
Minimum Time Served Prior to Transfer Eligibility	PEN 10.5	PEN 13.5	PEN 21	PEN 30	PEN 40	PEN 75
Presumptive Range (Prior to July 1, 2005)	PEN 39.90 - 44.10	PEN 51.30 - 56.70	PEN 79.80 - 88.20	PEN 114-126	PEN 152-168	PEN 285-315

AS = Alternative Sanctions

PEN = Penitentiary Only

ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Act 1135 of 1997 crime

5-64-401 Y Manufacture Methamphetamine

Release Eligibility - seventy percent (70%) of time imposed with credit for good time (see Act 1034 of 2005).

Other Level 7 offenses (list not complete, see table for additional offenses): See Seriousness Reference Table for effective dates. Target Offenses underlined - see grid policy on use of Regional Correctional Facilities

5 12 102	B	Robbery
5 13 210	Y	Intro C/S into Body (Schedule I-II)
5 14 123	A	Knowingly Exposing Another to HIV
5 14 124	A	Sexual Assault, First Degree
5 38 301	A	Arson (\$20,001 - \$100,000 Damage)
5 64 401.1	Y	Manufacture/Delivery/Possession Control Substance; Schedule I/II < 28 gms
5 64 401.2	Y	Manufacture/Etc. Controlled Substance Schedule I/II > 28 gms < 200 gms
5 64 402	B	<u>Failure to Keep Records-Drug Free Zone</u>
5 73 204	U	Violation Uniform Machine Gun Act [See statute for penalty range]
5 74 104	A	Engaging in Continuing Gang, Org. or Enterprise (First Degree)
5 74 104	Y	Engaging in Continuing Gang Org. or Enterprise (Second Degree)
5 74 107	B	Discharge of a Firearm From Car (Second Degree)
5 74 108	B	Violent Group Activity, Enhanced

Transfer Eligibility - one half of time imposed minus good time of up to one half, i.e. one fourth of time imposed if offender earns maximum good time.

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
Y	10-40 or life	10-60 or life	10-life	40-80 or life	life
A	6-30	6-50	6-60	n/a	40-life
B	5-20	5-30	5-40	40-80 or life	30-60

SERIOUSNESS LEVEL 8
Effective date January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	PEN 120	PEN 168	PEN 264	PEN 360	PEN 432	PEN 600
Minimum Time Served Prior to Release per Act 1326 of 1995 and Act 1135 of 1997	PEN 84	PEN 117.60	PEN 184.80	PEN 252	PEN 302.40	PEN 420
Minimum Time Served Prior to Transfer Eligibility	PEN 30	PEN 42	PEN 66	PEN 90	PEN 108	PEN 150
Presumptive Range (Prior to July 1, 2005)	PEN 114-126	PEN 159.60- 176.40	PEN 250.80- 277.20	PEN 342-378	PEN 401.40- 453.60	PEN 570-630

PEN = Penitentiary Only
ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Act 1326 of 1995 Crimes:	Act 1135 of 1997 and Act 1034 of 2005 (A.C.A. 16-93-611(a))				
5 11 102	Y	Kidnapping	5-64-401	Y	Manufacture Methamphetamine
5 12 103	Y	Aggravated Robbery			

Release Eligibility - seventy percent (70%) of time imposed with no credit for good time.

Other Level 8 offenses(list not complete, see table for additional offenses): See Seriousness Reference Table for effective dates.

5 10 103	B	Murder II			
5 13 201	B	Battery I			
5 13 310	Y	Terroristic Act			
5 26 301	B	Wife Battering I			
5 38 301	Y	Arson (More Than \$100,000 Damage)			
5 64 401.3	Y	Manufacture/Etc. Controlled Substance Schedule I/II > 200 gms < 400 gms			
5 64 401.4	Y	Manufacture/Etc. Controlled Substance Schedule I/II > 400 gms			
5 64 406	Y	Distribution of Controlled Substance to a Minor			
5 73 211	U	Perpetrating Crime with Machine Gun [See statute for penalty range]			
5 74 104	Y	Engaging in Continuing Gang, Org. or Enterprise (First Degree)			
5 74 106	Y	Simultaneous Possession of Drugs and Firearms			
5 74 108	A	Violent Group Activity, Enhanced			

Transfer Eligibility - one half of time imposed minus good time of up to one half, i.e. one fourth of time imposed if offender earns maximum good time
Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
Y	10-40 or life	10-60 or life	10-life	40-80 or life	life
A	6-30	6-50	6-60	n/a	40-life
B	5-20	5-30	5-40	40-80 or life	30-60

SERIOUSNESS LEVEL 9
Effective January 1, 1994

Criminal History Score	0	1	2	3	4	5+
Presumptive Sentence	PEN 240	PEN 312	PEN 396	PEN 480	PEN 600	PEN 720
Minimum Time Served Prior to Release per Act 1326 of 1995	PEN 168	PEN 218.40	PEN 277.20	PEN 336	PEN 420	PEN 504
Minimum Time Served Prior to Transfer Eligibility	PEN 60	PEN 78	PEN 99	PEN 120	PEN 150	PEN 180
Presumptive Range (Prior to July 1, 2005)	PEN 228-252	PEN 296.40- 327.60	PEN 376.20- 415.80	PEN 456-504	PEN 570-630	PEN 684-756

PEN = Penitentiary Only

ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED

Act 1326 of 1995 Crimes:

5 14 103 Y Rape
5 38 202 Y Causing a Catastrophe(Offense date prior to July 16, 2003)

Release Eligibility - seventy percent (70%) of time imposed per Act 1326 of 1995 with no credit for good time.

Other Level 9 offenses: See Seriousness Reference Table for effective dates.

5 10 101 Y Capital Murder - Attempt
5 10 101 A Capital Murder - Conspiracy/Solicitation
5 10 103 A Murder II
5 13 210 Y Introduction of C/S into Body to Commit Sexual Offense
5 13 310 Y Terroristic Act
5 54 202 Y Providing Material Support for a Terrorist Act
5 64 414 Y Continuing Criminal Enterprise
5 74 107 Y Discharge of a Firearm From Car (First Degree)
5 74 108 Y Violent Group Activity, Enhanced

Transfer Eligibility - one half of time imposed minus good time of up to one half, i.e. one fourth of time imposed if offender earns maximum good time.

Classification of crimes at this level and statutory range (shown in years):

Class	Normal range	Habitual §(a)	Habitual §(b)	Habitual §(c)	Habitual §(d)
Y	10-40 or life	10-60 or life	10-life	40-80 or life	life
A	6-30	6-50	6-60	n/a	40-life



DEPARTURE REPORT

Offender Name (Last, First, Middle)

County #

Name of

Judge _____ Date of Report _____ Circuit Court Case # _____

REASON FOR DEPARTURE:

Reference should be made to the complete text of departure criteria found at A.C.A. 16-90-804(d). Please Circle Appropriate Number. At least one departure criteria must be designated to be complete.

1. Mitigating Factors:
 1. Victim played an aggressive role or provoked the incident or was a willing participant.
 2. Offender lacked capacity of judgement due to mental or physical impairment.
 3. Offender played a minor or passive role in the crime.
 4. Offender compensated or made effort to compensate for any damage or injury before detection.
 5. Offender was lesser participant showing caution or concern for safety or well-being of victim.
 6. Offender acted in response to continuing physical or sexual abuse by victim.
 7. Policy on multiple offenses in a single course of conduct in offender's prior criminal history results in a sentence which is excessive for this particular offense.
 8. Offender has voluntarily admitted sexual offense and sought treatment before detection.
 9. Offender has made effort to provide assistance in investigation or prosecution of another as so indicated by motion by the State. Following circumstances may be weighed in mitigation:
 - a. Timeliness of assistance
 - b. Nature and extent of assistance
 - c. Truthfulness, completeness and demonstrable reliability of information or testimony
10. Other (attach extra sheet if necessary)

3. Aggravating Factors:
 1. Offender's conduct manifested extreme cruelty during commission of current offense.
 2. Offender knew victim vulnerable due to extreme youth, advanced age, disability or ill health.
 3. Offense was major economic offense established by one of the following criteria:
 - a. Multiple victims or incidents;
 - b. Monetary loss substantially greater than typical;
 - c. Degree of sophistication or time;
 - d. Misuse of fiduciary duty;
 - e. Other similar conduct
 4. Offense was major controlled substance offense if two or more of the following are present:
 - a. Three or more separate transactions involve sale, transfer or possession with intent;
 - b. Amounts substantially larger than the statutory minimums which define the offense;
 - c. Offense involved a high degree of planning or lengthy period or broad geographic area;
 - d. Offender occupied a high position in the drug distribution hierarchy;
 - e. Offender misused position of trust or status or fiduciary duty to facilitate commission;
 - f. Offender has received substantial income or resources from drug trafficking.
 5. Offender employed firearm in furtherance or flight unless such use is element of offense.
 6. Offense was sexual offense and part of pattern with the same or different victims under eighteen results in a sentence that is clearly too lenient.
 7. Policy on multiple offenses in a single course of conduct in offender's prior criminal history results in a sentence that is clearly too lenient.
 8. Offense was committed in manner that exposed risk of injury to others.
 9. Offense was a violent or sexual offense committed in victim's zone of privacy.
 10. Offender attempted to cover offense by intimidation of witnesses, tampering of evidence, or misleading authorities.
 11. Offense committed to avoid arrest or effect escape.
 12. Offender lacks minimum insurance in a vehicular homicide.
 13. Statutory minimum sentence overrides the presumptive sentence.
 14. Multiple concurrent sentences being entered at this time require a higher sentence.
 15. Sentence is higher as a result of other charges being dropped or merged.
 16. Other (attach extra sheet if necessary)

Defense Attorney

Judge's Signature _____

DEPARTURE REPORT

When to Complete: This report should be completed by the judge when (a) the disposition differs from the presumptive disposition; (b) the sentence length imposed differs from the presumptive sentence length; or (c) when the disposition and duration differ from the presumptive disposition and duration provided in the guidelines.

Offender Name: Record the name of the offender as it appears on the *Judgment and Commitment or Judgment and Disposition form*.

County #: The uniform identification number for each county. This number is used in conjunction with the Circuit Case Number as the complete record identifier for this case.

Judge Name: The name of the judge completing the Departure Report.

Circuit Court Case #: The number used for filing cases in the circuit court.

Reasons for Departure: In making decisions about departing from the guidelines, and in writing reasons for departures, judges should consult A.C.A. 16-90-804 (Supp. 1993)

If the departure reasons were stated in open court, a certified transcript of the reasons given may be attached to this report in lieu of listing the reasons.

Reasons stated for departure should be brief, but specific. They should distinguish the unusual nature of the current case, and indicate why the departure is more appropriate, fair, or equitable than the presumptive sentence.

Decisions with respect to sentencing disposition and sentence duration are logically separate. Departures with respect to disposition and duration are logically separate. A judge may depart from a presumptive disposition without departing from the presumptive duration, or vice-versa. If a judge departs from both a presumptive disposition and presumptive duration, two departure decisions have been made, each requiring written reasons. Reasons for both decisions should be given on a single Departure Report.

Distribution: White: Court File; Blue: Arkansas Department of Corrections for those committed to that institution; Green: Arkansas Sentencing Commission, 101 East Capitol, Suite 450, Little Rock, AR 72201; Gold: Prosecutor; Pink: Defense Attorney.