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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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Arkansas

By

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CONTENTS

1. Background; Sentencing System

a. Sentencing Framework	3
b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?	3
c. Which Agencies Are Responsible for the Supervision of Released Prisoners?.....	3
d. Which Agency Has Authority Over Parole Revocation?.....	3

2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System	4
b. Good Time, Earned Time, and Other Discounts.....	5
c. Principles and Criteria for Parole Release Decisions.....	5
d. Parole Release Guidelines.....	5
e. Risk and Needs Assessment Tools	6
f. Medical or Compassionate Release.....	6
g. Executive Clemency Power	6
h. Emergency Release for Prison Crowding	6

3. Parole Release Hearing Process

a. Format of Release Hearings.....	6
b. Information Before the Board; Factors the Board May Consider	7
c. Prisoners' Procedural Rights.....	7
d. Victims and Other Participants	7
e. Burden of Proof or Standards of Persuasion.....	7
f. Possible Outcomes at Parole Release Hearings; Form of Decisions	8
g. Administrative or Judicial Review of Parole Denial.....	8
h. Rescission of Parole Release Dates.....	8

4. Supervision Practices

a. Purposes of Supervision.....	8
b. Are All or Only Some Releasees Placed on Supervision?	8
c. Length of Supervision Term.....	8
d. Conditions of Supervision.....	9
e. Fees and Other Financial Sanctions	10

CONTENTS

5. Parole Revocation

a. Principles and Criteria of “When to Revoke”	10
b. Revocation Guidelines.....	10
c. Risk and Needs Assessment Tools	11
d. Preliminary and Final Revocation Procedures.....	11
e. Offenders’ Procedural Rights	11
f. Victims and Other Participants.....	12
g. Burden of Proof or Standards of Persuasion.....	12
h. Revocation and Other Sanctions	12
i. Issuing Parole Revocation Decisions.....	12
j. Administrative or Judicial Review of Parole Revocation Decisions.....	12
k. Re-Release Following Revocation	12

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction.....	12
b. Location in Government	12
c. Purpose (Vision/Principles/Rationale).....	12
d. Appointment and Qualifications of Board Members.....	13
e. Tenure of Board Members, Ease of Removal.....	13
f. Training and Continuing Education	13
g. Workload	13
h. Reporting and Accountability of Parole Board	13

End Notes.....	14
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1. Background; Sentencing System

a. Sentencing Framework

The Arkansas Parole Board was originally established in 1943 as the “State Penitentiary Board.” Major legislation in 1993 changed many facets of parole release in the state, the Board was renamed the “Arkansas Post-Prison Transfer Board.” Beginning in 2005, the Board has been called the “Arkansas Parole Board,” in part “to alleviate confusion on the part of the public about the duties of the Board.”¹

This Board is distinct from many others in the country because its discretion to deny release to some felony offenders is limited by statute. Beginning January 1, 1994, the Board can weigh the merits of release for certain felony offenders, those who are “discretionary transfer eligible.” Originally, these were offenders who committed first-degree murder, kidnapping, rape, aggravated robbery, causing a catastrophe, or engaging in a continuing criminal enterprise; however, the list has expanded over time.² Other felony offenders are “transfer eligible,” meaning that the Board can only deny release *based on established criteria* and only until the inmate completes a course of action established by the Board that would rectify their concerns.³

Arkansas has had an active sentencing commission since 1993.⁴ The sentencing commission plays a role in establishing transfer release eligibility dates based on guidelines designating offense severity based on crimes of conviction (see sentencing grid with transfer release eligibility line in Appendix of this report).⁵

b. Does the State Have a Parole Board or Other Agency with Discretionary Prison Release Authority?

Yes, the Arkansas Parole Board.⁶

<http://www.paroleboard.arkansas.gov/>

c. Which Agencies Are Responsible for the Supervision of Released Prisoners?

Parolees are supervised by Arkansas Community Correction.⁷

<https://www.ark.org/dcc/pmt/index.php>

d. Which Agency Has Authority Over Parole Revocation?

The Arkansas Parole Board has authority over parole revocation.⁸

2. Parole Release and Other Prison-Release Mechanisms

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

General rules of release eligibility. Arkansas has a bifurcated prison release eligibility process. Some offenders are automatically “transfer eligible” to parole and are released upon first eligibility unless specific (negative) criteria are met. Other offenders are “discretionary transfer eligible” and can be released only at the discretion of the Board through the transfer process or through standard parole release. Each process is described below.

Transfer eligibility. Inmates who have committed certain crimes after January 1, 1994 are eligible for an “automatic” transfer to parole unless they fail to meet a set of established criteria. After inmates become eligible for this type of release after serving one-third to one-half of their sentences with credit for good time. The fraction of time before eligibility depends on a determination of the seriousness of the crime made at sentencing.⁹

Discretionary transfer eligibility. Some inmates are eligible for discretionary transfer release (also sometimes called discretionary parole),¹⁰ also after serving one-third to one-half of their sentences with credit for good time. There is a lengthy list of convictions that, by statute, result in this type of eligibility for release. Such convictions currently include homicide and violent or sexual crimes, as well as other serious offenses. The last major change to the list of offenders eligible for discretionary transfer went into effect on April 2, 2015.¹¹

Inmates who committed crimes before January 1, 1994 and were eligible for parole are now eligible for discretionary transfer in accordance with the eligibility laws in effect at the time. The date of the crime governs which parole statute determines eligibility for release.¹² For example, an offender serving a sentence for a felony committed after April 1, 1983 but before January 1, 1994 is eligible for release after serving some fraction of the sentence, depending on how many prior felonies the person has committed. An individual sentenced as a first-time felony offender may be required to serve as little as one-third of the original sentence. In contrast, an individual serving a sentence on a fourth felony is not eligible for parole at all.¹³

70% transfer eligibility crimes. Certain crimes trigger parole eligibility only after 70% of a sentence has been served. Some of these crimes also trigger eligibility for discretionary release; others do not. These crimes currently include first-degree murder, kidnapping as a class Y felony, aggravated robbery, rape, trafficking of persons as a class Y felony, causing a catastrophe, and crimes related to manufacturing or trafficking of methamphetamine.¹⁴

Violent or sex offenders. As mentioned above, conviction under many violent crime or sex crime statutes results in discretionary transfer.¹⁵ Offenders convicted of a serious felony involving violence or convicted of one or more previous serious felonies involving violence face a mandatory term of 40 to 80 years of prison or life imprisonment. If convicted of rape or first-degree sexual assault with a victim under the age of 14 and previously convicted of a serious felony involving violence, the punishment is life imprisonment without the possibility of parole.¹⁶

Life sentences. Inmates sentenced to death or to life imprisonment without parole may be pardoned or have their sentences commuted. Inmates sentenced to life imprisonment are eligible for parole release only if the sentence is commuted to a term of years by executive clemency. Upon commutation, inmates are eligible for release on parole after half of the sentence has been served.¹⁷

Recurring eligibility after denial of release. If an inmate is eligible for automatic release and is not transferred because the Board requires a course of action to be completed, the inmate must be released when the course of action is complete. If an inmate fails to complete the course of action, he or she must then petition the Board for release.¹⁸ However, by board policy, non-discretionary transfer is reconsidered every six months.¹⁹

Inmates eligible for discretionary release must be reconsidered for transfer at least every two years by statute.²⁰ However, by Board policy, following any denial of discretionary release, inmates are reconsidered for transfer on an annual basis.²¹

b. Good Time, Earned Time, and Other Discounts

Inmates may be eligible for up to thirty days per month of “meritorious good time.” This credit affects the inmate’s transfer eligibility date, but does not reduce the length of the sentence. Good time may not reduce time served in prison by more than 1/2 of the term required for release eligibility (i.e., reduction of no more than one-sixth of a sentence for those who are eligible for release after one-third of their sentences are completed).²²

Under Department of Correction policy, meritorious good time may be awarded for good discipline, behavior, work practices, job responsibilities, and involvement in rehabilitative activities. The Department categorizes inmates into “classes” based on behavior; those in the lowest class status may not earn good time. In addition, inmates serving a disciplinary sentence may not earn good time.²³

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. As of April 2, 2015, regardless of the type of parole eligibility an inmate has, the Board may deny release of any offender that it determines to be a detriment to the community. The Board must provide a written justification that the inmate meets the definition of a “detriment to the community,”²⁴ which is a person who has:

- Demonstrated a pattern of behavior that indicates disregard for the safety and welfare of others;
- Exhibited violence or repeated violent tendencies;
- Has been convicted of a felony involving violence; or
- During the three (3) calendar years before the person’s parole hearing:
 - Demonstrated a documented lack of respect for authority towards law enforcement or prison officials while in the custody of the Department of Correction, the Department of Community Correction, or a law enforcement agency; or
 - Accrued multiple disciplinary violations while in the custody of the Department of Correction, the Department of Community Correction, or a law enforcement agency, including at least one (1) disciplinary violation involving violence or sexual assault while in the custody of the Department of Correction, the Department of Community Correction, or a law enforcement agency.²⁵

Statutory factors the Board must consider. The Board must consider a risk-needs assessment for all potential parolees. In addition, the Board is mandated by statute to set criteria for denial of release.²⁶ The criteria the Board has developed apply to all types of release:

1. Institutional adjustment in general, including the nature of any disciplinary actions;
2. When considered necessary, an examination and opinion by a psychiatrist or psychologist can be requested and considered;
3. The record of previous criminal offenses (misdemeanors and felonies), the frequency of such offenses, and the nature thereof;
4. Conduct in any previous release program, such as probation, parole, work release, boot camp or alternative service;
5. Recommendations made by the judge, prosecuting attorney, or sheriff of the county from which a person was sentenced, or other interested persons;
6. The nature of the release plan, including the type of community surroundings in the area the person plans to live and work;
7. The possibility that the inmate poses a detriment to the community to which he or she will be released;
8. The results of a validated risk/needs assessment;
9. The inmate’s employment record;
10. The inmate’s susceptibility to drugs or alcohol;
11. The inmate’s basic good physical and mental health;
12. The inmate’s participation in institutional activities, such as, educational programs, rehabilitation programs, work programs, and leisure time activities and;
13. When there is a detainer, the Board must pursue the basis of any such detainer and only release the inmate to a detainer where appropriate. A detainer must not be considered an automatic reason for denying parole.²⁷

Special standard for sex offenders. While there is no special standard for sex offenders, any sex offense that requires registration is subject to discretionary transfer release.²⁸

d. Parole Release Guidelines

Parole release guidelines. There are no release guidelines currently in use in Arkansas.

e. Risk and Needs Assessment Tools

Statutory mandate. The Board must consider a risk/needs assessment as part of all release decisions.²⁹

Risk instruments utilized. The Board uses two risk instruments, the Parole Risk Assessment Tool (PRAT), and the Arkansas Offender Risk Needs Assessment (ARORA). The Board created both instruments. It implemented ARORA in 2014 as an eventual replacement for PRAT.³⁰

Transparency. There is little information available to the public regarding Board risk assessment techniques.³¹

Sex offenders. The Board utilizes the Sex Offender Community Notification Assessment Program (SOCNA) to assess sex offenders.³² The process may include a review of the offender's criminal history, a polygraph examination or voice stress analysis, psychological testing, review of other relevant information, and assessment using actuarial instruments.³³

f. Medical or Compassionate Release

Arkansas allows medical parole for terminal illness or terminal incapacitation if the director of either the Department of Corrections or Community Corrections recommends such release to the Board and the Board approves. Release is considered when, in the independent opinion of either an ADC/ACC physician or a consultant physician in Arkansas, an inmate is terminally ill, permanently incapacitated, or would be suitable for hospice care and should be considered for transfer to parole supervision. Inmates may be released to the care of family or friends, or to a facility, subject to Board approval. If the medical condition of the inmate changes for the better, he or she may be required to return to prison.³⁴

g. Executive Clemency Power

The governor has state constitutional authority to grant various forms of executive clemency.³⁵ The Board must assist the governor in this process by recommending inmates for clemency. The Board investigates the applications of eligible inmates who have applied for pardon, sentence commutation, reprieve, respite, or remission of fine or forfeiture. At least 30 days before submitting to the governor a recommendation in favor of clemency, the Board must: (1) issue a public notice of its intention to make such a recommendation; and (2) send notice of

its intention to the circuit judge who presided over the applicant's trial, the prosecuting attorney, and the sheriff of the county in which the applicant was convicted and, if applicable, to the victim or the victim's next of kin if the victim or the victim's next of kin registered for notification with the prosecuting attorney.³⁶

h. Emergency Release for Prison Crowding

Arkansas' Board of Corrections can declare a prison overcrowding state of emergency whenever the population of the prison system exceeds 98% of rated capacity for more than thirty consecutive days.³⁷ The director of the Department of Corrections must provide a list of eligible inmates and recommend certain inmates from that list for parole, transfer, or discharge. The Board of Corrections may then move up the projected parole eligibility, transfer eligibility, or minimum release dates for any or all of the listed inmates by up to 90 days.³⁸ A state of emergency related to prison overcrowding may not be declared more often than once every 90 days.³⁹ This provision was utilized twice in 2014 to release approximately 700 inmates.⁴⁰

3. Parole Release Hearing Process

a. Format of Release Hearings

Release hearing procedures vary based on the level of discretion the Board exercises over release. Any release requires the affirmative vote of five parole board members. In all cases, Arkansas Community Corrections institutional release staff prepare case records for use by board members in case reviews and hearings. By law, these records must be compiled no later than six months prior to an inmate's eligibility date.⁴¹

"Non-discretionary" transfer release eligible inmates. Institutional release officers who prepare case records make a recommendation to the Board about whether hearings are required in transfer cases. A hearing is required if a major disciplinary report has been issued against an inmate, if there has been a request by the victim to have input on release conditions, if risk assessment results indicate that special release conditions need to be set, or if an inmate objects to the proposed conditions of release. In all other cases, the Board may hold a hearing if appropriate.⁴² If no hearing is held, an inmate may be released on the basis of a file review.⁴³

Hearing procedures for all prison inmates. Hearings are normally conducted by a member of the Board; however, the chairperson may designate parole revocation judges or investigators to conduct release hearings if staffing shortages exist. In such cases, inmates must be notified at least fourteen days prior to the hearing. Hearings are generally conducted in private unless the inmate requests otherwise in accordance with state law.⁴⁴

Modified release process for short-term offenders. Some short-term felony offenders (serving sentences of less than two years) are housed at the county jail prior to being processed into the Department of Correction. These inmates may be “transferred” to the Department of Community Correction directly from the county jail through a “jacket review” process conducted by either Department of Community Correction or Department of Correction staff. Inmates who have been convicted of violent offenses or class Y felonies, or who have committed violent/sexual acts while incarcerated, are not eligible for this program.⁴⁵

b. Information Before the Board; Factors the Board May Consider

According to Board policy, “[p]rior to the hearing, Board members must review information available about the offender’s prior history, current situation, events in the case since any previous hearing, information about the offender’s future plans and relevant conditions in the community.”⁴⁶

The Board has access to the information within the file prepared by an institutional review officer. The file contains documents relevant to the release criteria mentioned above (see § 2c of this report). According to policy,

“[t]he parole file will contain a voting worksheet for the Board members, a synopsis of the inmate’s state file, a Field Report submitted by a Parole/Probation Officer, required legal notices, the results of a validated risk/needs assessment, victim notification information if required, Form 153 responses from sheriffs, judges, and prosecuting attorneys, support and protest correspondence, if any, and prior Boot Camp or parole violation warrants, reports, transcripts, and parole plan. The file is delivered to the Board about one week before interviews at the unit in order for Board members to review prior to the hearing and to refer to the file during the hearing if necessary.”⁴⁷

c. Prisoners’ Procedural Rights

Inmates can participate in hearings and may select and identify persons to appear before the Board in support of release on parole.⁴⁸

The institutional release staff will give an inmate copies of any responses the Board has received from sheriffs, judges, and prosecuting attorneys.⁴⁹ Inmates may also, upon written request, receive a redacted version of any victim impact statement.⁵⁰ State law prohibits staff from releasing state criminal justice records to inmates. The institutional release staff must advise inmates that some additional confidential materials (such as witness statements) may be considered by the Board. The Board must inform the inmate if it relies on confidential materials as a basis for a decision.⁵¹

d. Victims and Other Participants

Victims who wish to be notified about an offender’s parole case must register with the Arkansas Department of Correction. Victims are entitled to present a written impact statement at a “victim impact hearing conducted by one or more members of the Board, concerning the effects of the crime, the circumstances surrounding the crime, the manner in which the crime was perpetrated and the reason(s) for the victim’s opposition to the inmate’s potential parole.”⁵²

The Board utilizes a form (see Appendix of this report) to solicit the written or oral recommendations of the sentencing court, the prosecuting attorney, and the sheriff of the county from which the inmate was committed.⁵³

The public is notified of parole release hearings as required by state law, but is not allowed to attend hearings without the consent of the inmate. Deliberations are always closed to the public.⁵⁴

e. Burden of Proof or Standards of Persuasion

While there is no specific burden of proof in transfer or parole release, “[d]ecisions on parole release, courses of action applicable prior to transfer, and transfer conditions to be set by the Parole Board shall be based on a reasoned and rational plan developed in conjunction with an accepted risk-needs assessment tool such that each decision is defensible based on pre-established criteria.”⁵⁵

f. Possible Outcomes at Parole Release Hearings; Form of Decisions

“Non-discretionary” transfer release eligible inmates. Those who are eligible for non-discretionary release face only two possible outcomes of any release decision:

1. Transfer to community corrections (in other words, release) with specified conditions such as supervision level, programming requirements, and facility placement when appropriate; or
2. Denial of transfer, based on established criteria, until the inmate completes a course of action established by the Board that would rectify the Board’s concerns.⁵⁶ After the completion of the required course of action and final review of the inmate’s file to ensure successful completion, the Board will be required to transfer the inmate to Community Corrections in accordance with administrative policy and subject to conditions attached to the transfer.⁵⁷

Discretionary transfer release eligible inmates. Those who are eligible only for discretionary transfer can be denied release with or without recommendations for how the inmate might improve the odds of future release. Even when the Board recommends a remedial course of action and the inmate complies with it, the Board is not required to release the inmate.⁵⁸

The Board member conducting a hearing is responsible for making a record of the major issues and findings in a summary.⁵⁹ Decisions of the Board are made available to institutional release officers and are then given to the inmate “in a manner consistent with unit policy.” It is also the responsibility of the institutional release officer to contact appropriate unit staff if an inmate is required to complete programming prior to release. An inmate must be notified of the Board’s decision in writing within 21 days.⁶⁰

g. Administrative or Judicial Review of Parole Denial

An inmate or their attorney can request reconsideration of adverse release decisions in writing within 60 days of the Board’s release vote.⁶¹ Inmates may request reconsideration only once per denial, and reconsideration may only be granted by an affirmative vote of five or more Board members.⁶²

h. Rescission of Parole Release Dates

In the event an inmate who has been granted transfer later becomes ineligible for transfer to community corrections, he or she must be transported to the department of corrections to serve the remainder of the sentence.⁶³ “Notice of the ineligibility and the reasons therefor must be provided” to the inmate, who may request a hearing before the Board to contest the factual basis for the alleged ineligibility.⁶⁴

4. Supervision Practices

Parole supervision rate. On December 31, 2015, there were 1,012 parolees in Arkansas per 100,000 adult residents. This is much higher than the 50-state average rate of 304 parolees per 100,000 adult residents.⁶⁵

a. Purposes of Supervision

According to statute, parole supervision should “enhance public safety and . . . assist the parolees in reintegrating into society.”⁶⁶ Arkansas Community Correction states its mission is “[t]o enhance public safety by enforcing state laws and court mandates through community partnerships and evidence-based programs that hold offenders accountable while engaging them in opportunities to become law-abiding, productive citizens.”⁶⁷

b. Are All or Only Some Releasees Placed on Supervision?

All releasees are supervised at first; however, parolees may be removed from “active supervision” for accruing “parole” meritorious good time.⁶⁸

c. Length of Supervision Term

Maximum supervision terms. In general, community corrections will release an offender when the combination of served and earned time equals the total number of days of the sentence imposed by the sentencing court. Nevertheless, the Board and the prosecuting attorney may file in the sentencing court a petition objecting to earned time discharge if sufficient evidence exists to warrant a forfeiture of earned discharge credit.⁶⁹ If there is no earned time available (or if earned time is lost), the maximum length of supervision is the total number of days remaining at the time of release on the original sentence imposed.⁷⁰ Some sex offenders may be monitored for up

to fifteen years regardless of the length of the remaining portion of the sentence, based on a finding that they pose a serious risk to the public and that there is a likelihood of future criminal activity.⁷¹

Early termination. Meritorious good time and earned discharge both provide mechanisms for the early termination of supervision. Both programs are described more fully below under “incentives.”

Extension of supervision term. Notwithstanding the sex offender exception described above, the Board does not have authority to extend the supervision term beyond the maximum length of the sentence imposed.

Incentives: “goal parole.” Up to 30 days per month of “parole” meritorious good time is awarded to eligible parolees for each month they spend successfully under community supervision.⁷² This parole meritorious good time may result in earned discharge from supervision.⁷³ When a parolee reaches the point at which the time spent on parole and the amount of good time accrued are equivalent to the length of the remaining sentence, community supervision can place the parolee in unsupervised status. Unsupervised parole is only available to those who have paid their fines, fees, and restitution. While on unsupervised release, the conditions of the release agreement are still in effect but the parolee does not have to pay supervision fees or report to the supervising officer (unless requested to do so).⁷⁴

In addition, Arkansas allows offenders sentenced after July 27, 2011 for Class A controlled substance felonies or Class B, C, or D felonies (other than those that require sex offender registration or that involve violence, kidnapping, manslaughter, or driving/boating when intoxicated) to receive “earned discharge” credits for their time spent successfully on supervision.⁷⁵ This credit accrues at a rate of 30 days per month.⁷⁶

d. Conditions of Supervision

The Board has set a number of standard conditions of release:

1. **REPORTS.** You must report to your supervising officer the next day after you are released unless that day is a weekend or holiday. In such cases you must report the next day the Parole Office is open. Thereafter, you must report as instructed by your supervising officer. All written and oral statements made by you to your supervising officer must be truthful.

2. **EMPLOYMENT/EDUCATION.** You must maintain approved employment or be enrolled in an approved education program unless otherwise directed. You must obtain permission from your supervising officer before quitting your employment or education program. If you lose your job or are terminated from your education program, you must notify your supervising officer within 48 hours.
3. **RESIDENCE AND TRAVEL.** You must obtain prior approval from your supervising officer to change your place of residence, stay away from your approved residence overnight, or leave your assigned county.
4. **LAWS.** You must obey all federal and state laws, local ordinances and court orders. You are required to pay all court-ordered fines, fees, and/or restitution. You must report any citations or summons to your supervising officer on the next regular workday. You must report in person following your release from an arrest, release from parole hold, and any other contact with law enforcement authorities on the next regular workday.
5. **WEAPONS.** You must not own, possess, use, pawn, sell or have under your control any firearm (or imitation) or other dangerous weapon, or be in the company of any person possessing such weapons. You must not possess any ammunition.
6. **ALCOHOL/CONTROLLED SUBSTANCES.** You will avoid the excessive use of alcohol, or abstain completely if directed, and will stay out of bars, taverns, clubs, and liquor stores. You must not sell, deliver or possess, or use controlled substances except as prescribed by a physician. You will submit yourself to random testing for the use of intoxicants and/or controlled substances.
7. **ASSOCIATION.** You must not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate. (Association with convicted felons at work, in counseling programs, in church, or in other locations and circumstances specifically approved by the Parole Board or your supervising officer is not prohibited).
8. **SUPERVISION FEES.** You must pay a monthly supervision fee unless granted an exemption. Community service work in lieu of supervision fees may be required.
9. **COOPERATION.** You must, at all times, cooperate with your supervising officer and the Parole Board. You must submit yourself to any rehabilitative, medical, or counseling program that the Parole Board or your supervising officer deems appropriate.

10. **SEARCH AND SEIZURE.** You must submit your person and/or property, place of residence, and motor vehicles to search and seizure at any time, day or night, with or without a search warrant by any Arkansas Department of Community Correction officer. You must also submit your person, place of residence, or motor vehicle to search at any time, day or night, whenever requested by any other certified law enforcement officer.
11. **WAIVER OF EXTRADITION.** Your acceptance of conditional release constitutes an agreement to waive extradition to the State of Arkansas from any jurisdiction in or outside the United States where you may be found, and you also agree that you will not contest any effort by any jurisdiction to return you to the State of Arkansas to answer a charge of violation of any of the conditions of your release.
12. **SPECIAL CONDITIONS.** The Board may set special conditions and the parolee must abide by any special conditions set by the Board, e.g., mental health, alcohol and/or drug abuse treatment program, or community service in lieu of fee exemption.

Sex offenders. Certain sex offenders may not reside with minors as a condition of parole, unless the Board makes a specific finding that the inmate poses no danger to minors residing in the residence.⁷⁸

Modification of conditions. A parole officer may request that a supervision condition be amended or removed entirely by the Board.⁷⁹ In addition, parole violations may result in modification of conditions by community corrections as an intermediate sanction short of revocation.⁸⁰

Incentives; lighter conditions. Apart from meritorious good time, which can result in placement on unsupervised parole (described above) there do not appear to be parole incentives related to lighter conditions.

e. Fees and Other Financial Sanctions

Parole supervision fees. Any offender under supervision of community corrections must pay the department a monthly fee of \$35. An offender on parole may be imprisoned for a violation of parole if the offender is financially able to pay the fees and does not do so.⁸¹ If an offender receives an exemption from supervision fees, community service work in lieu of the fees may be required.⁸²

Payments for drug and alcohol testing and treatment. Payment for drug or alcohol testing is not a condition of parole.⁸³

Restitution. If a court orders restitution, it must take into account the financial resources of the defendant and the obstacle payment of restitution will impose on the defendant's ability to meet other financial obligations; the defendant's ability to pay restitution on an installment basis; and the rehabilitative effect payment of restitution may have on the defendant. When restitution is ordered as part of a sentence, it becomes a condition of parole. If a defendant fails to comply with a restitution order and has not made a good faith effort to do so, parole may be revoked.⁸⁴

Child support. While child support payment is not a mandatory condition of parole, pre-existing child support obligations may be part of an offender's case plan as part of schedule to repay all outstanding financial obligations.⁸⁵

Other financial obligations. Inmates released on parole are required to pay all court-ordered fines and fees while on parole.⁸⁶

Incentives; reduction of economic sanctions. There are no incentives that reduce economic sanctions.

5. Parole Revocation

Parole revocation proceedings.

In 2015, the Bureau of Justice Statistics estimates that there were 216 parolees returned to incarceration on a new sentence in Arkansas and 5,592 parolees returned to incarceration through revocation.⁸⁷

Absconders.

There is no official report of the number of parole absconders in recent years.

a. Principles and Criteria of "When to Revoke"

Policy considerations. In 2011, as part of the Public Safety Improvement Act, Arkansas introduced intermediate sanctions for parole violations, including incarceration for up to seven days in a county jail.⁸⁸ The law was modified in 2013 to limit the number of times a parole officer could use an incarceral sanction without filing for revocation.⁸⁹ In April 2015, the legislature mandated development of an intermediate sanctions procedure and grid.⁹⁰ In late August 2015, the Board responded to the high number of returns to incarceration due to alleged parole

violations by creating a new policy in which a warrant for a parolee's arrest will only issue under certain circumstances, such as accusations of a violent or sexual crime. Other parole violators will be issued a notice to appear for a release violation hearing.⁹¹

Legal predicates. By statute, violation of any conditions of parole may trigger revocation proceedings. However, in order to revoke parole, an Administrative Law Judge or Board member must find that a parolee has *inexcusably* violated a condition of parole.⁹²

Statutorily enumerated factors. While statutes provide little guidance to the Board, the governing regulations state that:

"[w]hen making a revocation decision, the full range of alternatives to incarceration and available treatment options should be considered, in addition to considering the benefit of incarceration to the offender and the general public. During the hearing, the Board member or designee conducting the hearing may confer with the supervision officer to determine the best course of action for the offender based on the nature of the violation(s), supervision history, and available resources."⁹³

b. Revocation Guidelines

While regulations allow the Board and community corrections to develop a sanctions grid to address parole violations, it does not appear that the Board is required to utilize revocation guidelines as part of the hearing process.⁹⁴ According to official sources, community corrections has developed sanctions for parole violations that "range from a verbal warning to 120 days in a Technical Violators Center. Examples of available sanctions include community service, GPS monitoring, jail time, increased reporting, participating in a substance abuse assessment to determine needs, and a host of other similar actions."⁹⁵

c. Risk and Needs Assessment Tools

There is no official use of risk assessment tools at the revocation phase.

d. Preliminary and Final Revocation Procedures

Arrest or summons. A warrant for arrest must be issued if the parolee alleged to have violated parole would present "unreasonable risks to public or individual safety" or if there is a high likelihood that the parolee would

abscond.⁹⁶ As noted above, the Board's current policy is to issue a notice to appear for a revocation hearing unless the allegations are violent or sexual in nature.⁹⁷

Preliminary hearing. "The Board's designee for conducting [both] preliminary and revocation hearings is the Parole Revocation Judge (PRJ)."⁹⁸ A parolee arrested for violation of parole is entitled to a preliminary hearing to determine whether there is reasonable cause to believe that he or she has violated a condition of parole. If the parolee is in custody, this hearing must be held within 14 days of arrest. The parolee must be given prior notice of the date, time, and location of the hearing.⁹⁹

If the PRJ finds reasonable cause to believe a violation has occurred, this finding will either trigger a final revocation hearing before the Board or re-release to supervision (with or without additional supervision conditions set in response to the violation).¹⁰⁰

Final hearing. At the revocation hearing, the Board member or PRJ must seek and consider evidence that supports or counters the violation charged, as well as any extenuating or mitigating circumstances that suggest that the violation does not warrant revocation. A revocation may be held in lieu of a preliminary hearing if conducted within the 14-day time frame.¹⁰¹

New felony charges. If a parolee is charged with a new felony, the Board or PRJ may choose to hold or postpone a revocation hearing. If a felony conviction occurs and the parolee is sent back to prison, an "administrative revocation" with no hearing can be processed.¹⁰²

e. Offenders' Procedural Rights

The Board member or PRJ conducting the hearing must allow the parolee and his or her attorney to:

- Present evidence and favorable witnesses;
- Seek disclosure of evidence;
- Confront adverse witnesses (unless the witness would be subject to a risk of harm or where good cause is found to limit the cross-examination);
- Have counsel of choice present or be appointed counsel if indigent (however, the Board or PRJ may determine that the situation does not justify the expense of a lawyer);
- Request postponement of hearing for good cause.¹⁰³

The parolee also has the right to apply for a waiver of either or both of the hearings.¹⁰⁴

f. Victims and Other Participants

The Board may subpoena witnesses to appear for a revocation hearing.¹⁰⁵ Revocation hearings are open to the public.¹⁰⁶

g. Burden of Proof or Standards of Persuasion

The Board or its designee must find that the parolee has inexcusably failed to comply with a condition of parole by a preponderance of the evidence.¹⁰⁷

h. Revocation and Other Sanctions

If a parolee is found to have violated release conditions, the Board or PRJ may return the parolee to supervision, sometimes with additional conditions of release. The parolee may be re-incarcerated. The parolee may be required to participate in the technical violator program (described below). Lastly, the parolee may be ordered to an “appropriate alternative to incarceration.”¹⁰⁸

Waiver directly to Technical Violator’s Program. If a parolee has committed a serious technical violation or has a pattern of minor violations, he or she may be eligible for the Technical Violator’s Program (TVP) provided that the offender knowingly and intelligently signs a hearing waiver.¹⁰⁹ Participation in a TVP involves “90 to 120 days of confinement followed by 12 months of applied programming in a community setting.”¹¹⁰

i. Issuing Parole Revocation Decisions

Within 21 days, the PRJ must prepare a summary of the hearing for the Board and the parolee.¹¹¹ Decisions are recorded on a disposition of revocation hearing form.¹¹²

j. Administrative or Judicial Review of Parole Revocation Decisions

A parolee may file an administrative appeal of parole revocation with the Board within 30 days of the disposition. In the appeal, the parolee may request a general review of the decision to revoke, stating specific reasons why the decision should be reversed. The Board will consider the appeal, and may affirm or reverse the decision by five affirmative votes.¹¹³

Parolees may also make a direct judicial appeal. A court may set aside a revocation if it finds that the Board acted arbitrarily or capriciously.¹¹⁴

k. Re-Release Following Revocation

If an offender’s parole is revoked, he or she will be scheduled for later release. An offender revoked to the Department of Corrections may be incarcerated for up to one year. An offender revoked to community corrections (e.g. the TVP program) may be held for up to six months.¹¹⁵

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

By statute, the Board has authority over parole release and revocation.¹¹⁶

b. Location in Government

The Arkansas Parole Board is an independent agency.¹¹⁷

c. Purpose (Vision/Principles/Rationale)

The Arkansas Parole Board’s stated mission is: “[t]o effectively and efficiently serve the citizens of Arkansas through the conditional release of offenders via structured and evidenced-based decision-making; thereby ensuring the public’s safety, the empowerment of victims, and that offenders will be provided opportunities for positive behavioral change and held accountable for their actions upon release.”¹¹⁸

The Board’s vision is that it will strive to become a national model for releasing authorities by:

- Making data-driven parole decisions through: (1) The consistent application of nationally recognized evidenced-based approaches. (2) The consideration of all available case information. (3) The application of appropriate decision criteria.
- Stipulating programs, conditions, and services in a manner that enhances the reentry of offenders into the community.
- Responding to parole violations appropriately and effectively by utilizing evidenced-based approaches, and taking into account the severity of the violation and the risks posed by the offender.
- Providing victims of crime with opportunities to give input and with timely information regarding the decision-making process.
- Collaborating with stakeholders on policies, programs, and processes.
- Streamlining the decision-making process through innovative policies, programs, and technologies.¹¹⁹

d. Appointment and Qualifications of Board Members

The Board is composed of seven full time members appointed by the Governor and confirmed by the Senate.¹²⁰

Qualifications. Under state law, board members must have a bachelor's degree and five years' professional experience or seven years' general experience. Relevant experience must be in parole or probation, correction, criminal justice, law enforcement, law, psychology, sociology, social work, or another related field."¹²¹

e. Tenure of Board Members, Ease of Removal

Each member must serve a seven-year term, except that the terms must be staggered by the Governor so that the term of one member expires each year.¹²² "If a vacancy should occur on the Board prior to the expiration of a term, the Governor must fill the vacancy for the remainder of the unexpired term, subject to confirmation by the Senate at its next regular session." The Governor may remove a Board member for good cause as prescribed by law.¹²³

f. Training and Continuing Education

Since July 2011, all members must complete annual training developed in compliance with guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association. Training components must include at a minimum an emphasis on data-driven decision making, evidence-based practices, stakeholder collaboration, and recidivism reduction.¹²⁴

g. Workload

In fiscal year 2015-2016 the Board conducted 14,873 hearings and screenings. 10,462 offenders, or 71% of those heard, were approved for release. In 1,420 hearings, the Board denied release.¹²⁵

h. Reporting and Accountability of Parole Board

On or before February 1 each year, the Board must issue a written report.¹²⁶ The report must be directed to the Governor and to the General Assembly and must contain statistical and other data concerning its work, "including research studies which it may make on parole or related functions."¹²⁷

Pursuant to the statute, certain portions of parole files will be provided by community corrections for inspection "upon request by a person having a proper interest therein and whenever the interests or welfare of the person involved make inspection desirable or helpful: 153 forms [the official form for input from law enforcement officials], Executive Clemency (commutation & pardon) applications, and vote worksheets." The agency may release other information unless restricted by law with the chairperson's permission.¹²⁸

END NOTES

- ¹ Ark. Parole Bd., *History*, <http://www.pardoleboard.arkansas.gov/about-us> (last visited Aug. 17, 2016). Note, however, that “parole” has been renamed “transfer” in this jurisdiction and many statutes related to prison release do not mention the word “parole.”
- ² Ark. Parole Bd., *Annual Report for Fiscal Year 2015-2016* (2017), [http://www.pardoleboard.arkansas.gov/Websites/parole/images/Annual%20Report%20FY16%20\(fnal\).pdf](http://www.pardoleboard.arkansas.gov/Websites/parole/images/Annual%20Report%20FY16%20(fnal).pdf).
- ³ Code Ark. R. 158.00.1-2.3.
- ⁴ 1993 Ark. Acts 532, § 4(A).
- ⁵ Ark. Sentencing Comm’n, *Arkansas Sentencing Standards Grid*, <http://www.arkansas.gov/asc/pdfs/Arkansas-Sentencing-Standards-Grid.pdf> (last visited Aug. 17, 2016).
- ⁶ Ark. Code Ann. § 16-93-701.
- ⁷ Ark. Code Ann. § 16-93-712; Ark. Community Correction, About Us, <http://www.dcc.arkansas.gov/about-us> (last visited Sept. 12, 2017).
- ⁸ Ark. Code Ann. § 16-93-617.
- ⁹ Ark. Code Ann. § 16-93-614(c)(3)(A).
- ¹⁰ See Ark. Parole Bd., *FAQs: Parole*, <http://www.pardoleboard.arkansas.gov/faqs#parole> (last visited Sept. 12, 2017).
- ¹¹ Ark. Code Ann. §§ 16-93-615(b)(1), 16-93-620(a). Current convictions eligible for discretionary transfer include murder in the first or second degree, attempted murder in the first degree, manslaughter, negligent homicide, rape, kidnapping, sexual assault in the first or second degree, sexual abuse in the first degree, battery in the first or second degree, domestic battering in the first or second degree, simultaneous possession of drugs and firearms, various types of terrorist acts, terroristic threatening, arson, aggravated robbery, attempted aggravated robbery, residential or aggravated residential burglary, unlawful discharge of a firearm from a vehicle, or any crime that requires sex offender registration. See Code Ark. R. 158.00.1-2.4.
- ¹² Ark. Code Ann. § 16-93-612.
- ¹³ Ark. Code Ann. § 16-93-607.
- ¹⁴ Ark. Code Ann. § 16-93-618.
- ¹⁵ Ark. Code Ann. § 16-93-615(b)(1).
- ¹⁶ Ark. Code Ann. § 5-4-501(c). A serious felony involving violence is murder in the first or second degree, kidnapping, aggravated robbery, rape, a terroristic act, sexual assault in the first degree, causing a catastrophe, aggravated residential burglary, aggravated assault upon a law enforcement officer or an employee of a correctional facility.
- ¹⁷ Ark. Code Ann. §§ 16-93-613, 16-93-614.
- ¹⁸ Ark. Code Ann. § 16-93-615(a)(2), (b)(5).
- ¹⁹ Code Ark. R. 158.00.1-1.1.
- ²⁰ Ark. Code Ann. § 16-93-615 (b)(5).
- ²¹ Code Ark. R. 158.00.1-1.1.
- ²² Ark. Code Ann. § 12-29-201.
- ²³ Code Ark. R. 159.00.1-7.9.
- ²⁴ Code Ark. R. 158.00.1-2.6.
- ²⁵ *Id.*, Ark. Code Ann. § 16-93-101.
- ²⁶ Ark. Code Ann. § 16-93-615 (a)(1)(B), (a)(2)(A)(ii).
- ²⁷ Code Ark. R. 158.00.1-2.13.
- ²⁸ Code Ark. R. 158.00.1-2.2.
- ²⁹ *Id.*, Ark. Code Ann. § 16-93-615.
- ³⁰ Correspondence with Brooke D. Cummings, Executive Administrator, Ark. Parole Bd. (Feb. 24, 2017); See also Ark. Parole Bd. *Minutes of the Arkansas Parole Board* (Aug. 14, 2014), <http://www.pardoleboard.arkansas.gov/Websites/parole/images/081414.pdf>.
- ³¹ Correspondence with Ark. Parole Bd. *supra* note 30.
- ³² *Id.*
- ³³ Ark. Dep’t Corr. *Individualized Community Notification Assessments*, http://adc.arkansas.gov/inmate_info/assessment_explanation.html (last visited Mar. 15, 2017).
- ³⁴ Ark. Code Ann. § 12-29-404.
- ³⁵ Ark. Const. art. VI, § 18. (“In all criminal and penal cases, except in those of treason and impeachment, the Governor shall have power to grant reprieves, commutations of sentence, and pardons, after conviction; and to remit fines and forfeitures, under such rules and regulations as shall be prescribed by law.”).
- ³⁶ Ark. Code Ann. § 16-93-204(e).
- ³⁷ Ark. Code Ann. § 12-28-603.
- ³⁸ Ark. Code Ann. § 12-28-604(a).
- ³⁹ Ark. Code Ann. § 12-28-605(b).
- ⁴⁰ Arkansas News, *Prison Board Acts to Ease Overcrowding* (Jun. 24, 2014), <http://www.arkansasnews.com/news/arkansas/prison-board-acts-ease-overcrowding-0>; Leigh Hahn-Kreimeier, Stuttgart Daily Leader, *State to Release over 600 Inmates Early* (Mar. 4, 2014), <http://www.stuttgartdailyleader.com/article/20140304/NEWS/140309863>.
- ⁴¹ Code Ark. R. 158.00.1-2.1.
- ⁴² Code Ark. R. 158.00.1-2.3. Note, however, that a victim is entitled to a separate hearing from that of the inmate. See Code Ark. R. 158.00.1-2.11.
- ⁴³ Code Ark. R. 158.00.1-2.3.
- ⁴⁴ Code Ark. R. 158.00.1-2.12, 158.00.1-2.14.
- ⁴⁵ Ark. Code Ann. § 16-93-710. “Jacket review” is simply a file-only review process.
- ⁴⁶ Code Ark. R. 158.00.1-2.14.
- ⁴⁷ Code Ark. R. 158.00.1-2.11.
- ⁴⁸ *Id.*
- ⁴⁹ *Id.*
- ⁵⁰ Code Ark. R. 158.00.1-2.10.
- ⁵¹ Code Ark. R. 158.00.1-2.11.
- ⁵² Code Ark. R. 158.00.1-2.10.
- ⁵³ Code Ark. R. 158.00.1-2.9.
- ⁵⁴ Code Ark. R. 158.00.1-2.14.
- ⁵⁵ Ark. Code Ann. § 16-93-615(i).
- ⁵⁶ Code Ark. R. 158.00.1-2.3; Ark. Code Ann. § 16-93-615(a)(2)(B), § 16-93-615(a)(2)(C), § 16-93-615(b)(4) (“Any transfer of an offender specified in this subsection shall be issued upon an order, duly adopted, of the Parole Board in accordance with such policies and procedures.”).
- ⁵⁷ Code Ark. R. 158.00.1-2.3.
- ⁵⁸ Code Ark. R. 158.00.1-2.4.
- ⁵⁹ Code Ark. R. 158.00.1-2.14.
- ⁶⁰ Code Ark. R. 158.00.1-2.16, .17.
- ⁶¹ Code Ark. R. 158.00.1-2.25.
- ⁶² *Id.*
- ⁶³ Ark. Code Ann. § 16-93-617(b)(1). See also Code Ark. R. 159.00-8.1.
- ⁶⁴ Ark. Code Ann. § 16-93-617(b)(2).
- ⁶⁵ Danielle Kaebler & Thomas P. Bonzcar, Bureau of Justice Statistics, *Probation and Parole in the United States, 2015* at 21 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁶⁶ Ark. Code Ann. § 16-93-712.
- ⁶⁷ Code Ark. R. 158.00.1-2.24; See also Arkansas Community Correction, *About Us*, <http://www.dcc.arkansas.gov/about-us> (last visited Sept. 12, 2017).
- ⁶⁸ See Ark. Dep’t of Community Correction, *Policy Manual* (2012), at 21–23, <http://www.arkleg.state.ar.us/assembly/2013/Meeting%20Attachments/520/112062/Exhibit%208%20-%20Probation%20and%20Parole%20Services%20manual.pdf>.
- ⁶⁹ Ark. Code Ann. § 16-90-1304.
- ⁷⁰ *Id.*
- ⁷¹ Ark. Code Ann. § 5-4-107.
- ⁷² Ark. Code Ann. § 12-29-201(a).
- ⁷³ *Id.* at (d).
- ⁷⁴ See Ark. Dep’t of Community Correction Policy Manual, *supra* note 68 at 21-23.
- ⁷⁵ Ark. Code Ann. § 16-90-1302.
- ⁷⁶ Ark. Code Ann. § 16-90-1303.
- ⁷⁷ Code Ark. R. 158.00.1-6 Attachment 3.

END NOTES

- ⁷⁸ Ark. Code Ann. § 16-93-709. This statute applies to most sex offenses listed in the criminal code.
- ⁷⁹ Code Ark. R. 158.00.1-2.24.
- ⁸⁰ Ark. Code Ann. § 16-93-712(d)(3).
- ⁸¹ Ark. Code Ann. § 16-93-104.
- ⁸² Code Ark. R. 158.00.1-6, Attachment 3; see also Ark. Code Ann. § 5-4-201, 202 (showing fines sentencing courts may impose).
- ⁸³ Correspondence with Ark. Parole Bd. *supra* note 30.
- ⁸⁴ Ark. Code Ann. § 5-4-205.
- ⁸⁵ Ark. Code Ann. § 16-93-101(1).
- ⁸⁶ Code Ark. R. 158.00.1-6 Attachment 3.
- ⁸⁷ Kaeble & Bonzcar, *supra* note 65 at 24 (Appendix Table 6).
- ⁸⁸ 2011 Ark. Act 570 (S.B. 750). This Act was driven by the Justice Reinvestment efforts of a bipartisan work group that analyzed sentencing and community supervision policies in Arkansas. See Nat'l Conference of State Legislators, *Justice Reinvestment: Arkansas* (last updated Jan. 2016) <http://www.ncsl.org/research/civil-and-criminal-justice/justice-reinvestment-in-arkansas.aspx>.
- ⁸⁹ 2013 Ark. Laws Act 1415 (S.B. 860).
- ⁹⁰ 2015 Ark. Laws Act 895 (S.B. 472). Ark. Code Ann. § 16-93-712.
- ⁹¹ Arkansas News, *Parole Board Oks Less Stringent Rules for Parole Violators to Ease Overcrowding* (Aug. 27, 2015) <http://www.arkansasnews.com/news/arkansas/parole-board-oks-less-stringent-rules-parole-violators-ease-overcrowding>; See also Ark. Code Ann. § 16-93-705(a), which authorizes the Board to issue a notice to appear rather than a warrant.
- ⁹² Ark. Code Ann. § 16-93-705.
- ⁹³ Code Ark. R. 158.00.1-3.6.
- ⁹⁴ Code Ark. R. 158.00.1-3.10.
- ⁹⁵ Correspondence with Ark. Parole Bd. *supra* note 30.
- ⁹⁶ Code Ark. R. 158.00.1-3.3 "This does not prohibit the supervision officer from arresting and detaining the parolee with a 'white warrant' until the offender's preliminary or full parole revocation hearing or when directed by Board policy to arrest and detain the offender on the Board's warrant."
- ⁹⁷ See *supra* note 91.
- ⁹⁸ Code Ark. R. 158.00.1-3.2. However, note that the Board must retain the right to exercise any authority delegated to the PRJ.
- ⁹⁹ Ark. Code Ann. § 16-93-705(b).
- ¹⁰⁰ *Id.*
- ¹⁰¹ Code Ark. R. 158.00.1-3.9.
- ¹⁰² Code Ark. R. 158.00.1-3.5. If the conviction is later set aside, the Board must release the parolee back to supervision unless the Board has previously found there to be a preponderance of evidence, after a hearing, that the parolee inexcusably violated one or more conditions of release.
- ¹⁰³ Code Ark. R. 158.00.1-3.9.
- ¹⁰⁴ Code Ark. R. 158.00.1-3.4; Ark. Code Ann. § 16-93-705 (e). The parolee must let their parole officer know what witnesses are expected to testify on their behalf. "In addition, all potential witnesses must possess relevant testimony to the proceedings." Ark. Parole Board, *FAQs*, <http://www.paroleboard.arkansas.gov/faqs>.
- ¹⁰⁵ Ark. Code Ann. § 16-93-706.
- ¹⁰⁶ Ark. Parole Bd., *FAQs*, <http://www.paroleboard.arkansas.gov/faqs>.
- ¹⁰⁷ Ark. Code Ann. § 16-93-705 (a)(6).
- ¹⁰⁸ Code Ark. R. 158.00.1-3.6.
- ¹⁰⁹ Code Ark. R. 158.00.1-3.4.
- ¹¹⁰ Ark. Comm. Corr., *Programs and Services*, <http://www.dcc.state.ar.us/programs-and-services>.
- ¹¹¹ Ark. Code Ann. § 16-93-705 (b)(8).
- ¹¹² Code Ark. R. 158.00.1-3.8.
- ¹¹³ Code Ark. R. 158.00.1-3.12.
- ¹¹⁴ *Gatlin v. Hobbs*, 2014 WL 5858346 (W.D. Ark. Nov. 12, 2014), citing *Webb v. Bishop*, 413 S.W.2d 862 (Ark. 1967).
- ¹¹⁵ Code Ark. R. 158.00.1-3.7, -3.8.
- ¹¹⁶ Ark. Code Ann. §§ 16-93-701(a), 16-93-705.
- ¹¹⁷ Comm'n on Accreditation for Corr. Standards, *Compliance Re-accreditation Audit: Arkansas Board of Parole* at 9 (April 28-29, 2008), <http://www.paroleboard.arkansas.gov/Websites/parole/images/2008ACAuditReport.pdf>.
- ¹¹⁸ Ark. Parole Bd., *About Us*, <http://www.paroleboard.arkansas.gov/about-us> (last visited Sept. 29, 2017).
- ¹¹⁹ *Id.*
- ¹²⁰ Code Ark. R. 158.00.1-1; Ark. Code Ann. § 16-93-201(a)(1).
- ¹²¹ Code Ark. R. 158.00.1-1. In addition, "The American Correctional Association (ACA) recommends that the racial makeup of the Board should be representative of the diversity of the significant population under its jurisdiction. If the composition of the Board does not meet this standard, the Chairperson will bring this issue to the Governor's attention during the selection process for a new Board member."
- ¹²² Ark. Code Ann. § 16-93-201 (a) (3).
- ¹²³ Code Ark. R. 158.00.1-1.
- ¹²⁴ *Id.* ("Whether or not they have served on the Board previously, a member appointed after July 1, 2011, shall complete a comprehensive training course developed in compliance with guidelines from the National Institute of Corrections, the Association of Paroling Authorities International, or the American Probation and Parole Association.").
- ¹²⁵ Annual Report, *supra* note 2, at 10.
- ¹²⁶ Ark. Code Ann. § 16-93-202(c)(1).
- ¹²⁷ *Id.* at (c)(2).
- ¹²⁸ Code Ark. R. 158.00.1-5.5.2.