

1. THE SENTENCING COMMISSION

Q. What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

The Arkansas Sentencing Commission was established in 1993. It has remained in essentially the same form since its inception, though its duties have been expanded over time.¹

Q. Membership: who appoints them, for what terms, with what required qualifications?

The Commission consists of nine voting members and two advisory members. The chair of the Senate Judiciary Committee and the chair of the House Judiciary Committee each appoint one of the two advisory members.

The Governor appoints the 9 voting members:

- (3) Circuit judges;
- (2) Prosecuting attorneys;
- (2) Public defenders or private attorneys who mainly specialize in criminal defense; and
- (2) Private citizens.

The voting members serve staggered terms of 5 years. Voting members serve until replacements are appointed. The Governor selects one member to serve as Chair of the Commission.²

Q. Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Arkansas Sentencing Commission is an independent criminal justice agency.³

Q. How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission has three current employees: one Executive Director and two attorneys.⁴ The Commission selects an Executive Director from a pool of candidates compiled by the chair. The Executive Director then employs other employees as necessary to perform the duties of the Commission, subject to chair approval.⁵

Q. What is the commission's current statutory mandate?

The Arkansas Sentencing Commission was created to "evaluate the effect of sentencing laws, policies, and practices on the criminal justice system, to make appropriate and necessary revision to the sentencing standards, and to make recommendations to the legislature on proposed changes of sentencing laws, policies, and practices."⁶

The Commission is statutorily mandated to adopt a sentencing standards grid and periodically review and revise those standards. The commission may review crimes classifications and sentences and make recommendations for change when advisable to further the sentencing goals of the state. It must also develop the necessary research and analysis system to review any proposed or existing legislation affecting sentencing length.⁷

The Commission must also collaborate with the Administrative Office of the Courts to develop and implement a sentencing order. Additionally, the Commission must produce annual reports regarding compliance with the sentencing standards generally.⁸

Working alongside the Arkansas Board of Corrections, the Commission is mandated to develop a strategic plan for a balanced correctional system. The Commission is also responsible for creating continuing education programs and seminars regarding the sentencing standards for presentation to judges, prosecuting attorneys, and public defenders.⁹

In performing any of the above duties, the Commission has the authority to collect information, data, reports, and statistics from any state, county or local government agency, and may coordinate these efforts with the Administrative Office of the Courts, Arkansas Crime Information Center, circuit court clerks, and various state and local correctional agencies when necessary.¹⁰

Q. Do statutes and/or guidelines identify management of prison and jail resources as a goal?

Yes. The Commission is directly charged with leading strategic planning for the correctional plan for the state (in conjunction with the Board of Corrections). In that role, one aspect of the Commission's mandate is to "monitor compliance with sentencing standards, assess their impact on the correctional resources of the state with the assistance of the board, and determine if the standards further the adopted sentencing policy goals of the state." Additionally, the commission must "determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length."¹¹

Q. Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

The Commission primarily utilizes existing data sets that were compiled by other criminal justice agencies (e.g. Utah Commission on Criminal and Juvenile Justice). There are no regularly published data sets made available for outside research by the Sentencing Commission.¹²

The Commission is required to produce annual reports regarding compliance with sentencing standards. The report must include a county-by-county and statewide accounting of:

- (1) Sentences to the Department of Correction and Department of Community Correction;
- (2) Average sentence length for each sentence by offense type and severity level; and
- (3) Percentage of sentences that were upward departures from the sentencing standards (including the average number of months sentenced above the recommended sentences for these departures).

The report also must include data from prior years.¹³

2. THE GUIDELINES

Q. When were the guidelines first implemented?

The Commission was created in 1993, and promulgated a sentencing grid, which became effective on January 1, 1994.¹⁴

Q. In recent years, have they been modified at least once a year?

The Commission is required to issue annual reports, and to periodically review the sentencing standards, but is not required to modify them annually.¹⁵

Q. Do the commission's recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

Although the statute defining the authority and power of the Arkansas Sentencing Commission appears to grant the Commission authority to revise the guidelines in compliance with the rulemaking procedures in the Arkansas Administrative Procedure Act subject to veto or modification by the legislature at the next session,¹⁶ the Arkansas Legislature recently revised the Administrative Procedure Act to require legislative review *prior* to any rules taking effect.¹⁷

The Commission is required to submit a biennial report to the Governor, General Assembly, and the Arkansas Judicial Council three months before the start of the Assembly's regular session. This report includes summaries of commission proceedings as well as legislative and administrative recommendations.¹⁸

Q. Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The sentencing guidelines apply only to felonies.¹⁹ The sentencing procedures do not apply to probation revocation proceedings,²⁰ nor do they apply when the crime is capital murder²¹ or when the sentencing phase is tried before a jury and the jury recommends a sentence to the court.²²

Q. Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

The Commission has adopted one Sentencing Standards Grid, which is divided into 10 offense seriousness levels. Less serious offenses are ranked at offense seriousness level 1, and more serious offenses are ranked at offense seriousness level 10.²³

Q. How is the presumptive sentence determined?

The presumptive sentence is determined by finding the sentencing standards grid cell at the intersection of the column defined by criminal history (horizontal axis) and the row defined by the offense seriousness level (vertical axis) on the grid.²⁴ Each cell sets forth the applicable disposition(s): Arkansas Department of Corrections (ADC), which involves commitment to the state prison; Community Correction Centers (CCC), which the courts may utilize as an alternative to ADC for certain target offenses; Alternative Sanctions (AS), which may include supervised or unsupervised probation, community service, or jail. When ADC is the applicable disposition, the guidelines also include an appropriate sentence duration (stated in months).²⁵

Q. Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

Yes, the Sentencing Grid contains a diagonal line which separates presumptive prison sentences from a presumptive choice of alternative sentencing options. This diagonal line begins with seriousness level 7, and moves diagonally down to the right, ending at the intersection of criminal history scores of 5 or higher, and criminal serious level 3.²⁶

For offenses not sentenced to the Department of Corrections, the court may suspend imposition of sentence or place the defendant on probation.²⁷ The court is not authorized to suspend execution of sentence.²⁸

An offender cannot be sentenced to a term of imprisonment and a subsequent term of probation. However, a court may sentence an offender to a term of imprisonment and suspend imposition of sentence as to an additional term of imprisonment.²⁹

Q. Are there border boxes or other categories permitting multiple sentence types?

Many of the cells on the sentencing grid permit multiple disposition types: ADC (Arkansas Department of Corrections), CCC (Community Correction Center) or AS (Alternative Sanctions).³⁰ Within these cells, the court can impose any of the listed dispositions, and the sentence will not be considered a departure. Everything with a severity level of 8 or higher only prescribes ADC sentencing.³¹

Q. Are the guidelines purely advisory, or are they legally binding?

The sentencing standards are voluntary and thus are advisory.³² The presumptive sentence under the sentencing standards is considered the starting point for the sentencing process, but “[t]he full statutory range of punishment is available for all cases.”³³

3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

Q. What is the overall/general standard for departure?

The sentencing standards promulgated by the Arkansas Sentencing Commission are purely advisory, and the full statutory range of punishment is available in each case. The presumptive sentence under the sentencing standards represents a typical case. When a case is atypical, departure may be appropriate.³⁴ The sentencing order must include information about any departure from the sentencing guidelines “on placement and sentence length, the number of months above or below the presumptive sentence, and the justification for the departure.”³⁵

Departure reasons are unnecessary when:

- (1) The imposed sentence does not depart from the presumptive sentence;
- (2) The sentence is a result of a probation or suspended imposition of sentence revocation proceeding;³⁶
- (3) A jury has recommended a sentence;
- (4) The crime is a felony DWI;
- (5) The crime was capital murder; or
- (6) The offense is dismissed or nolle prossed (meaning prosecution is discontinued).³⁷

Q. Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

The Commission’s enabling statute provides a non-exclusive list of aggravating and mitigating factors that may be considered as reasons for departure.³⁸

Q. Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

Assisting law enforcement in the resolution of other crimes and having an attitude that “suggests amenability to supervision” are both listed as mitigating circumstances on the supplementary form used for both the General Matrix and the Sex & Kidnap Matrix. The form does not suggest treating a guilty plea as a mitigating factor during sentencing.³⁹

Two specific acts of acceptance of responsibility are mentioned among the potential mitigating factors:

- (1) Before detection, the offender either compensates or makes a good faith effort to compensate the victim for any damage or injury,⁴⁰ and
- (2) Before detection (in sexual offenses only), the offender admits voluntarily both the nature and the extent of the sexual offense, and seeks out and participates in professional treatment or counseling.⁴¹

If the State finds that the defendant has made a good faith effort to provide substantial assistance to the investigation or prosecution of another alleged offender, the following circumstances may be considered as mitigating factors for the defendant’s own conviction:

- (1) The timeliness of the defendant’s assistance;
- (2) The nature and extent of the defendant’s assistance; and
- (3) The truthfulness, completeness, and demonstrable reliability of any information or testimony provided by the defendant.⁴²

In a guilty plea where the parties agree upon a sentence that is a departure from the guidelines, both parties must supply reasons for the departure. The judge retains authority to accept or reject the plea based on the facts of the case. If the plea is rejected, the defendant is allowed to withdraw the plea.⁴³

Q. Are there limits on the degree of durational (length-of-custody) departure?

As advisory guidelines, the only limits on the degree of durational departure constraining a judge are the statutory minimum and maximum ranges for each particular crime.⁴⁴

Q. Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

There are no limits on the availability of dispositional departure; the only limits on any departure are those imposed by each crime's statutory requirements.⁴⁵

4. PRISON RELEASE DISCRETION

Q. Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

The timing of eligibility for parole is determined by statute, but the parole board retains release discretion.⁴⁶

The Commission is responsible for establishing transfer release eligibility. Transfer release eligibility refers to the earliest time at which an offender can be transferred from prison to community supervision. The Commission placed a transfer eligibility line between seriousness levels six and seven on the grid. If an offender is sentenced to a crime that falls above the transfer eligibility line, he or she must serve one half of the sentence before being eligible for transfer. If the offender is sentenced in a category ranked 6 or less, he or she is eligible for parole release after serving one-third of the sentence. Under both scenarios, credit may be given for meritorious good time.⁴⁷

If an offender is convicted of a violent felony offense or any felony sex offense, and has previously plead guilty or nolo contendere, or has been found guilty of any such offense, the offender will not be eligible for release, and must serve 100% of the sentence.⁴⁸

An inmate who is sentenced under the Two and Three Strikes provisions for a violent felony may be considered eligible for parole or for community supervision transfer once they reach both their normal eligibility date for release and also attain a minimum age of 55 years old.⁴⁹

Q. Does the state have a "truth in sentencing" law, limiting the extent of early release?

Utah does not have a "truth in sentencing" statute. Nonetheless, Utah qualified for federal grant funding (while the grant existed) aimed at promoting truth in sentencing because of its practices, including the use of sentencing guidelines to guide both sentencing and parole release decisions.⁵⁰

For offenders sentenced to prison, Arkansas law defines release eligibility based on the severity level of the crime committed. Specifically there are four categories requiring an offender to serve a certain percentage of the total sentence before release eligibility:

- (1) Certain violent or sex offenders must serve 100% of the sentence;⁵¹
- (2) Certain violent or drug trafficking offenders must serve 70% of the sentence;⁵²
- (3) Offenders convicted of crimes above the transfer line (offense seriousness levels 7 through 10 on the grid) must serve one half of the sentence; and
- (4) Offenders convicted of crimes below the transfer line (6 and lower on the grid) must serve one-third of the sentence.⁵³

However, the parole board has discretion to deny release (that is, to deny transfer to community supervision) so the actual time to be served is uncertain.⁵⁴ Most inmates are eligible for good time credits, though those credits may only reduce an inmate's transfer eligibility time by one-half.⁵⁵

Q. Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

The number listed on the grid is the ‘presumptive sentence’ and represents a recommended target maximum sentence. As explained above, when an offender has been sentenced to prison, Arkansas law determines release eligibility based upon the severity of the crime. Offenders may serve from one-third (for less serious offenses) to 100% of the pronounced sentence (for violent or sexual offenses) before being eligible for transfer to community supervision. The parole board has discretion to transfer the offender from prison to community supervision or to deny the transfer, so the actual amount of time to be served is uncertain.⁵⁶

Q. Is the period of post-prison supervision independent of any unserved prison term?

The period of post-prison supervision is the amount of time remaining in the individual sentence after the offender is released by the parole board.⁵⁷ However, an inmate transferred or paroled to the Department of Community Correction is eligible to receive good-time reductions in his or her length of supervision.⁵⁸

Q. What good-time credits do prisoners earn? Is program participation considered?

Prisoners earn good-time credits that allow for earlier release eligibility. An inmate may earn up to 30 days of ‘good-time’ for each month of incarceration after the imposition of a sentence.⁵⁹ The maximum an individual’s transfer eligibility date may be reduced is one half.⁶⁰ Meritorious good time does not allow for an actual reduction in the length of an offender’s sentence, and the offender will serve the remaining time on parole.⁶¹

Allocations of meritorious good time may be awarded for good discipline, behavior, work practices, job responsibilities, and involvement in rehabilitative activities while a prisoner is in custody.⁶²

Offenders who are sentenced to offenses that require service of 70% or 100% of their sentence are not eligible for a good time reduction in their eligibility dates for transfer to community supervision. An exception, however, exists for those convicted of methamphetamine offenses and sentenced into the 70% Parole Eligibility category. Those individuals are eligible for good-time reductions, reducing the total time served to not less than 50% of the original sentence.⁶³ Participation in BOOT CAMP, an alternative prison program, can also qualify inmates for early release.⁶⁴

Q. Are prisoners subject to exceptional, “second-look” releasing mechanisms?

Prison terms are not typically subject to exceptional, “second-look” releasing mechanisms, and inmates are generally held until their transfer eligibility dates. There are three main exceptions that may allow for early release:

(1) The Prison Overcrowding Emergency Powers Act (EPA) allows for the Board of Corrections to declare an overcrowding emergency when the population of the prison system exceeds 98% of its total capacity for a period of at least 30 days. In such a situation, inmates can have their transfer eligibility date reduced by no more than three months to help alleviate the overcrowding. Also, if there is a county jail backlog of over 500 inmates, an emergency may be declared allowing for any inmates incarcerated for nonviolent offenses and who have served at least six months of their time in prison to have their transfer eligibility date reduced by up to one year.⁶⁵

(2) Terminally ill or permanently incapacitated inmates may be eligible for home detention.⁶⁶

(3) Electronic monitoring of parolees may also allow for the release of certain inmates who have served 120 days in a prison facility. This is only available to inmates who were not sentenced by a bench or jury verdict and were sentenced according to a cell on the sentencing guidelines grid with an incarceration range of 36 months or less or a presumptive sentence of probation. Only inmates who committed certain felonies may be eligible.⁶⁷

Otherwise, inmates may file a request to the Governor for a pardon or sentence commutation.⁶⁸

5. RELATIONSHIP TO CRIMINAL LAWS

Q. Did the guidelines replace some or all previous statutory maxima?

The guidelines did not replace any previous statutory minima or maxima. “The statutory minimum and maximum ranges for a particular crime shall govern over a presumptive sentence if the presumptive sentence should fall below or above such ranges.”⁶⁹

Q. Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and overridden whenever a mandatory applies?

The guidelines are set independently of the pre-existing statutory minima. However, the statutory minimum governs over a presumptive sentence, so the statutory minimum should be followed when the two conflict. The Arkansas Sentencing Commission explicitly recognized that the statutory minimums for certain DWI offenses are greater than the recommended sentences in the guidelines⁷⁰ so departure reasons are not required when the statutory minimums are imposed.⁷¹ A departure reason must be given for all other statutory overrides that differ from the presumptive sentence, and in fact, one of the aggravating factors provided on the sentencing order is “Statutory minimum sentence overrides the presumptive sentence.”⁷²

Q. Are some “mandatory” minima subject to case-specific “departure” or other exception?

The statutory minimum or maximum ranges for a particular crime govern over the presumptive guidelines sentence if the presumptive sentence falls below or above the statutory ranges.⁷³

6. CRIMINAL HISTORY SCORING

Q. What are the major components of the criminal history score?

An offender’s criminal history score is computed from the following criteria:

- (1) Prior felony records;
- (2) Prior misdemeanor records;
- (3) Prior juvenile records; and
- (4) Custody status at the time of the offense.

The statute defines ‘records’ as including: any convictions; findings of guilt; acceptance of guilty or nolo contendere pleas; prior probation instances, suspended impositions of sentence, or suspended executions of sentence; any records expunged after 8/31/1994; and certain dismissals ordered after 8/31/1994.⁷⁴

Weight is only assigned to Class A misdemeanors, which are the more serious misdemeanors. Juvenile offenses will only be counted for offenses for which the juvenile could have been tried as an adult.⁷⁵

Custody status refers to the offender being under any type of criminal justice restraint when the offense was committed. Restraints may include pretrial bond, suspended imposition of sentence, probation, parole, post-prison supervision, and release pending sentencing for a prior crime.⁷⁶

Q. Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

Convictions for adult felonies in seriousness levels 6-10 are always counted for criminal history purposes. Convictions for adult felonies in seriousness levels 1-5 “will not be counted if a period of fifteen (15) years has elapsed since the date of discharge from or expiration of the sentence, to the date of the current offense.” Juvenile adjudications or misdemeanor convictions must have occurred within 10 years of the time of offense for the current conviction to be considered.⁷⁷

Q. Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

For juvenile adjudications, weight is only assigned to offenses for which a juvenile could have been tried as an adult. Also, no more than one point may be accrued in total from juvenile offenses, unless one of the offenses was murder, kidnapping, aggravated robbery, rape or battery, from which an offender can accrue a maximum of two points.⁷⁸ Additionally, points are only accrued for the most serious misdemeanors (Class A misdemeanors), and no more than one point may be accrued in total from misdemeanor offenses.⁷⁹

7. MULTIPLE CURRENT OFFENSES

Q. Are consecutive sentences limited? If so, how (e.g. prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

When an offender is convicted of multiple offenses, the sentences are presumed to be concurrent unless, upon recommendation of the jury or on the court's own motion, the court orders the sentences to run consecutively. It should be noted that the court is not bound by the jury's recommendation, and may choose to run the sentences concurrently even if the jury has recommended consecutive sentences. If the offender is being sentenced for both a felony conviction and misdemeanor conviction, the sentences must be concurrent, and both sentences may be satisfied by service of the felony sentence.⁸⁰

Q. In consecutive sentencing, how is the offender's criminal history taken into account?

The Arkansas guidelines do not appear to treat the offender's criminal history score any differently when the court is sentencing consecutively versus concurrently.

8. ENFORCEMENT MECHANISMS (LOCATION ON THE "ADVISORY"-TO-"MANDATORY" CONTINUUM)

Q. Are recommended sentences enforced by prosecution and defense sentence appeals?

An offender can only appeal his or her sentence if it was in excess of the maximum sentence authorized by law.⁸¹

Q. Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

The court is required to fill out a Sentencing Order, and give all reasons for departure from the presumptive sentence listed on the grid. The court retains discretion and is permitted to deviate from the standards by any amount permitted by the statutory minima and maxima.⁸²

Q. Are some deviations from the guidelines not deemed departures?

There are a few situations when sentences that do not align with the guidelines are not considered departures. Certain statutory minimum sentences for DWIs are higher than the guidelines recommendations; when these sentences are imposed, they are not deemed departures. Additionally, when the offender is tried by a jury, the jury is also responsible for recommending an appropriate sentence, but such sentencing is not subject to the guidelines.⁸³ Finally, sentencing following revocation of probation is not subject to the guidelines.⁸⁴

Q. Do some deviations require especially strong justification? Or minimal justification?

As long as the court imposed sentence falls within the statutorily required minimum and maximum, no deviations require especially strong justification.⁸⁵

ENDNOTES

- ¹ 1993 Ark. Acts 532, § 4(a); Ark. Code Ann. § 16-90-802 (2018).
- ² Ark. Code Ann. § 16-90-802(b)–(c) (2018).
- ³ Ark. Code Ann. § 16-90-802(d)(8) (2018). See *Commission Membership*, Arkansas Sentencing Commission, <http://www.arkansas.gov/asc/membership.html> (last visited Dec. 12, 2017).
- ⁴ *Commission Membership*, *supra* note 3.
- ⁵ Ark. Code Ann. § 16-90-802(f)–(g) (2018).
- ⁶ Ark. Code Ann. § 16-90-802(a) (2018).
- ⁷ *Id.* at (d)(1)–(6).
- ⁸ *Id.* at (d)(9), (11)(A).
- ⁹ *Id.* at (d)(4), (10).
- ¹⁰ *Id.* at (d)(7)(A)(ii).
- ¹¹ Ark. Code Ann. § 16-90-802(d)(4), (6) (2018).
- ¹² Utah Code § 63M-7-405(2)(b) (2017).
- ¹³ Ark. Code Ann. § 16-90-802(d)(9)(A)–(C) (2018).
- ¹⁴ 1993 Ark. Acts 532, § 4, Ark. Code Ann. § 16-90-802(d)(1)(A) (2018).
- ¹⁵ Ark. Code Ann. § 16-90-802(d)(2)–(9) (2018).
- ¹⁶ Ark. Code Ann. § 16-90-802(d)(2)(D)(i) (2018).
- ¹⁷ Ark. Code Ann. § 10-3-309(c) (2018).
- ¹⁸ Ark. Code Ann. § 16-90-802(e)(1)–(2) (2018).
- ¹⁹ Ark. Code Ann. § 16-90-803 (2018).
- ²⁰ *Id.* at (a)(1)(B).
- ²¹ *Id.* at (b)(5).
- ²² *Id.* at (b)(4). Under Arkansas law, the sentencing guidelines are applicable only to defendants who have entered a plea of guilty or no contest, or who are tried by the bench after being permitted by the prosecutor to waive a jury trial. *Hutcherson v. State*, 47 S.W.3d 267, 272–74 (Ark. Ct. App. 2001) (Hart, J., concurring) (discussing the different sentencing procedures applicable to defendants who proceed to a jury trial versus defendants who plead guilty or proceed to a bench trial).
- ²³ Ark. Code Ann. § 16-90-803(a)(2) (2018); Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 3 (Oct. 2015).
- ²⁴ Ark. Code Ann. § 16-90-803(b)(3) (2018).
- ²⁵ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 3-4 (Oct. 2015).
- ²⁶ *Id.* at 3.
- ²⁷ Ark. Code Ann. § 5-4-104(e)(1)(B) (2018).
- ²⁸ *Id.* at (e)(1)(B)(ii).
- ²⁹ *Id.* at (e)(3).
- ³⁰ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 3 (Oct. 2015).
- ³¹ *Id.* at 99 (explaining that a dispositional departure occurs when the type of sanction given is not listed as an option for the presumptive sentence).
- ³² Ark. Code Ann. § 16-90-801(b) (2018).
- ³³ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 1 (Oct. 2015).
- ³⁴ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 1 (Oct. 2015).
- ³⁵ Ark. Code Ann. § 16-90-802(d)(11) (2018).
- ³⁶ Ark. Code Ann. § 16-90-803(a)(1)(B) (2018).
- ³⁷ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 99 (Oct. 2015).
- ³⁸ Ark. Code Ann. § 16-90-804(c) (2018).
- ³⁹ Utah Adult Sentencing & Release Guidelines at 31 (2017).
- ⁴⁰ Ark. Code Ann. § 16-90-804(c)(3) (2018).
- ⁴¹ Ark. Code Ann. § 16-90-804(c)(7) (2018).
- ⁴² Ark. Code Ann. § 16-90-804(c)(8) (2018).
- ⁴³ Ark. Code Ann. § 16-90-804(b)(2) (2018).
- ⁴⁴ Ark. Code Ann. § 16-90-803(b)(3)(C) (2018).
- ⁴⁵ Ark. Code Ann. § 16-90-803(b)(3)(C) (2018).
- ⁴⁶ Ark. Code Ann. §§ 16-93-615, 16-93-701(a)(1) (2018).
- ⁴⁷ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 103-104 (Oct. 2015).
- ⁴⁸ Ark. Code Ann. § 16-93-609 (2018).
- ⁴⁹ Ark. Code Ann. § 16-93-615(h) (2018).
- ⁵⁰ Utah specifically qualified for the grant under a provision for indeterminate sentencing states that required “[p]ersons convicted of . . . violent crime on average serve not less than 85% of the prison term established under the state’s sentencing and release guidelines.” William J. Sabol et al., The Urban Institute, *The Influences of Truth-in-Sentencing Reforms on Changes in States’ Sentencing Practices and Prison Populations* 5, 11, 20, 22 (2002).
- ⁵¹ Ark. Code Ann. § 16-93-609 (2018).
- ⁵² Ark. Code Ann. § 16-93-618 (2018).
- ⁵³ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 103-104 (Oct. 2015).
- ⁵⁴ Ark. Code Ann. § 16-93-615(a)(2)(B) (2018).
- ⁵⁵ Ark. Code Ann. § 12-29-201 (2018).
- ⁵⁶ Ark. Code Ann. § 16-93-615 (2018).
- ⁵⁷ Ark. Code Ann. § 16-93-616(a)(3) (2018).
- ⁵⁸ Ark. Code Ann. § 12-29-201(b) (2018).
- ⁵⁹ Ark. Code Ann. § 12-29-201(a) (2018).
- ⁶⁰ *Id.* at (e)(2).
- ⁶¹ *Id.* at (d).
- ⁶² *Id.* at (c).
- ⁶³ Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 104 (Oct. 2015).
- ⁶⁴ Ark. Code Ann. § 12-28-703 (2018).
- ⁶⁵ Ark. Code Ann. §§ 12-28-601 – 12-28-604 (2018); Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 104-105 (Oct. 2015).
- ⁶⁶ Ark. Code Ann. § 16-93-708 (2018).
- ⁶⁷ Ark. Code Ann. § 16-93-711 (2018).
- ⁶⁸ Ark. Code Ann. § 16-93-207 (2018).
- ⁶⁹ Ark. Code Ann. § 16-90-803(b)(3)(C) (2018).
- ⁷⁰ For DWI 4, the grid does not recommend prison for the first two criminal history columns; for DWI 5 and 6, the grid recommends shorter durations than the mandatory sentences set in statute. See Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 99 (Oct. 2015).
- ⁷¹ *Id.*; Ark. Code Ann. § 16-90-803(b)(3)(C) (2018).
- ⁷² Most departure reasons are listed in statute. Ark. Code Ann. § 16-90-804 (2018). However, the departure reason relating to statutory minimum overrides is located only on the sentencing order. See Arkansas Sentencing Order, available at https://courts.arkansas.gov/system/files/Sentencing%20Order-2015_0.pdf
- ⁷³ Ark. Code Ann. § 16-90-803(b)(3)(C) (2018).
- ⁷⁴ Ark. Code Ann. § 16-90-803(b)(2)(A)–(B) (2018).
- ⁷⁵ *Id.* at (b)(2)(C)(ii), (iii).
- ⁷⁶ *Id.* at (b)(2)(C)(iv).
- ⁷⁷ Ark. Code Ann. § 16-90-803(b)(2)(C)(v) (2018).
- ⁷⁸ *Id.* at (b)(2)(C)(iii).
- ⁷⁹ *Id.* at (b)(2)(C)(ii).
- ⁸⁰ Ark. Code Ann. § 5-4-403 (2018).
- ⁸¹ Ark. R. Crim. P. 37.1 (2018).
- ⁸² Ark. Sentencing Standards Grid Offense Seriousness Rankings & Related Material 1 (Oct. 2015). See generally Ark. Code Ann. § 16-90-804 (2018).
- ⁸³ Ark. Code Ann. § 16-90-804(e) (2018).
- ⁸⁴ Ark. Code Ann. § 16-90-803(a)(1)(B) (2018).
- ⁸⁵ Ark. Code Ann. § 16-90-804(a) (2018).