



ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114

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Commission Meeting May 31, 2023

MEMBERS PRESENT

Judge Gordon McCain
Mr. Nathan Smith
Mr. Keith Rutledge
Mr. Cory Cox

Judge Shannon Blatt
Ms. Kathleen Bell
Mr. Dan Shue
Judge Carlton Jones

Ms. Diana Lowe
Mr. Michael Robbins
Mr. Kendrell Collins

STAFF PRESENT

Tawnie Rowell
Micaela Whitelow

Toni Hamp

Laura Ebner

VISITORS PRESENT

DOC Secretary Joe Profiri
Lindsay Wallace (DOC Chief of Staff)
Lasonja Evans (DOC Fiscal)

Julie Chavis (Attorney General's office)
Michael Lewis (Attorney General's office)
Manda Bass (DOC Communications)

Judge Gordon McCain declared that a quorum was present and called the meeting to order. Everyone present was provided an opportunity for photographs by Manda Bass, DOC communications. Judge McCain introduced Secretary Profiri, and attendees made brief introductions.

Judge Blatt moved and Mr. Rutledge seconded the motion to approve the minutes from the December 2022 meeting. The motion was approved unanimously.

Mr. Robbins moved and Judge Jones seconded the motion to approve the quarterly expense report. The motion was approved unanimously.

The Commission was presented with the Population Monitoring report. The population is growing close to the rate anticipated in earlier projections. New population projections are expected from JFA later this year and will likely be presented at the 4th quarter commission meeting. The Board of Corrections recently voted to make more beds available to ease the county jail back-up. The total population as of this date is 18,294, which includes approximately 16,000 in ADC facilities and 2,000 in county jail back-up. The Department is actively working to procure property for building a new facility to increase capacity and relieve the county jail back-up. The goal is to have that project complete in the next three years.

Director Tawnie Rowell presented the Time Computation Report for the fourth quarter of 2022. The Time Computation Report is prepared in accordance with the DOC Secretarial Directive and contains the statistical results of the commission staff's review of time entry.

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The commission was presented with the contract with JFA for population projections. The cost of the renewal of the contract for this year is split between the Sentencing Commission, ADC, and ACC. Mr. Rutledge moved and Judge Blatt seconded the motion to approve the contract. The motion was approved unanimously.

In preparation for considering the Seriousness Level rankings for new, modified, and omitted offenses, Ms. Rowell advised that at the 2021 rankings meeting, the method for conducting the vote for ranking offenses was to utilize a batch method. Offenses with different conduct provisions but under the same statute were separately ranked but grouped together for discussion and vote. Mr. Robbins moved and Judge Jones seconded to proceed with the batch method for ranking offenses.

The Commission considered rankings for new, modified, and omitted offenses. Attached Tables A, B, and C detail the results of this consideration. All votes were unanimous unless otherwise noted in the table.

Ms. Rowell presented the Director's report. Commission staff submitted 38 Impact Assessments during this legislative session. Several more were drafted but not submitted due to the bill being held or time constraints late in the session. Training was recently provided in Polk County, and an upcoming training is set for Fayetteville, the Pope County Bar Association, and the Arkansas Prosecutors Coordinators Conference.

The commissioners will be provided reports from three committees in the coming months: the Sentencing Order Revision Committee, Time Computation Review Committee, and the Recidivism Reduction Task Force created by the Protect Act. The National Association of Sentencing Commissions 2023 conference will be held in Nevada at Lake Tahoe. Ms. Rowell discussed the portions of the Protect Act relevant to the commission: technical corrections, changes to parole eligibility, and the application of earned release credits. The Department is in the process of drafting rules for these changes as they will go into effect on January 1, 2025. All three of the Commission's bills from our legislative package were included in the Protect Act. The commission has some new statutory duties from the Protect Act and those will be further discussed at the next meeting.

Ms. Rowell highlighted few other legislative pieces of note. Legislation was passed concerning prior residential burglary convictions and the application of parole eligibility statutes. Secretary Profiri has asked for AG opinion on the application so policy decisions can be made on the front end before the effective date of the new laws. Additionally, the Safer Arkansas Act will require DOC & Parole board to publish information online in one spot and develop an app for providing this information to the public.

A discussion was held concerning the next meeting. Judge Jones moved and Mr. Smith seconded a motion to hold the next meeting by Zoom at 8:30 a.m. on July 19, 2023.

The next meeting will be on July 19, 2023, at 8:30 a.m. and will be held via Zoom.

Meeting adjourned.

Table A: MODIFIED OFFENSES

STATUTE	TITLE	Motion By	Seconded By	RANKING
5-18-103 (a)(1) & (c)(1)	Trafficking of persons - recruiting etc a person subjected to involuntary servitude	Shue	Smith	8
5-18-103 (a)(1) & (c)(2)	Trafficking of persons - recruiting etc a person subjected to involuntary servitude- victim is a minor			9
5-18-103 (a)(2) & (c)(1)	Trafficking of persons - benefiting from participating in an involuntary servitude venture			8
5-18-103 (a)(2) & (c)(2)	Trafficking of persons - benefiting from participating in an involuntary servitude venture - victim is a minor			9
5-18-103 (a)(5) & (c)(1)	Trafficking of persons - selling or advertising travel services			8
5-18-103 (a)(5) & (c)(2)	Trafficking of persons - selling or advertising travel services - victim is a minor			9
5-68-405	Obscenity - possession, sale, distribution	Smith	Blatt	2
5-38-203 (b)(4)(B)	Criminal mischief first degree - critical infrastructure	Bell	Robbins	6
5-39-203 (a)(3) & (b)(1)(B)	Criminal trespass - Critical infrastructure			2
5-39-305 (a) & (b)(1)(B)	Criminal trespass on premises located in an unincorporated area - Critical infrastructure			2
5-64-440 (c)	Trafficking a controlled substance	Rutledge	Lowe	9
5-10-104 (a)(1) & (c)	Manslaughter - extreme emotional disturbance	Smith	Robbins	7
5-10-104 (a)(2) & (c)	Manslaughter - causes or aids suicide			7
5-10-104 (a)(3) & (c)	Manslaughter - recklessly causes death			7
5-10-104 (a)(4) & (c)	Manslaughter - negligence in course of felony			7
5-39-201 (a)	Residential burglary	Blatt	Lowe	8
5-39-204 (a) & (b)(1)(A)	Aggravated residential burglary - armed with a deadly weapon	Blatt	Lowe	9
5-39-204 (a) & (b)(1)(B)	Aggravated residential burglary - causes or attempts to cause death or serious physical injury	*Smith moved for 8. No second. After discussion, Smith withdrew. Bell voted NO on subsequent motion by Blatt.		9
5-39-204 (a) & (b)(2)	Aggravated residential burglary - residential structure occupied	Rutledge	Jones	8

Table A: Modified Offenses

STATUTE	TITLE	Motion By	Seconded By	RANKING
5-70-104 (a)(2) & (b)(2)	Promoting prostitution in the first degree - victim is a minor	Blatt	Smith	5
5-73-103 (c)(1)(C)	Possession of firearms by certain persons	*Lowe objected, motion passed.		5
27-14-2212 (a)(1) & (b)	Mutilation of serial numbers	Jones	Rutledge	2
5-26-303 (a)(1) & (b)(2)(B)(ii)	Domestic battering in the first degree - serious physical injury deadly weapon- prior conviction within five years	Bell	Jones	8
5-26-303 (a)(3) & (b)(2)(B)(ii)	Domestic battering in the first degree - Serious physical injury extreme indifference - prior conviction within five years			8
5-26-303 (a)(4) & (b)(2)(B)(ii)	Domestic battering in the first degree - derious physical injury - victim is twelve or younger or sixty or older - prior conviction within five years			8
5-26-303 (a)(5) & (b)(1)	Domestic battering in the first degree - two or more prior convictions			8
5-26-303 (a)(5) & (b)(2)(B)(i)	Domestic battering in the first degree - two or more prior convictions and victim is pregnant			8
5-26-303 (a)(5) & (b)(2)(B)(ii)	Domestic battering in the first degree - two or more prior convictions and prior conviction within five years			8
5-26-303 (a)(6) & (b)(2)(B)(ii)	Domestic battering in the first degree - use of a firearm - prior conviction within five years			8
5-26-304 (a)(1) & (b)(2)(B)	Domestic battering in the second degree - serious physical inury - prior conviction within five years			5
5-26-304 (a)(2) & (b)(2)(B)	Domestic battering in the second degree - physical injury by means of a deadly weapon - prior conviction within five years			5
5-26-304 (a)(3)(A) & (b)(2)(B)	Domestic battering in the second degree - recklessly causes serious physical injury by means of a deadly weapon - prior conviction within five years			5
5-26-304 (a)(3)(B) & (b)(2)(B)	Domestic battering in the second degree - recklessly causes serious physical injury - victim is four or younger - prior conviction within five years			5
5-26-304 (a)(4) & (b)(2)(B)	Domestic battering in the second degree - physical injury to victim sixty or older or twelve or younger - prior conviction within five years			5

Table A: Modified Offenses
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Table B: NEW OFFENSES

STATUTE	TITLE	Motion By	Seconded By	RANKING
5-14-138 (b) & (d)	Registered offender prohibited from purchasing, owning, possessing, using, or operating an unmanned aircraft	Blatt	Robbins	4
5-36-126 (b) & (f)	Theft of a catalytic converter - theft of property	Blatt	Robbins	3
5-36-126 (c) & (a)(1)(A)	Theft of a catalytic converter - unauthorized possession - subsequent conviction			3
5-36-126 (c) & (g)(1)(B)	Theft of a catalytic converter - unauthorized possession - attempt, conspire, solicit			3
5-36-126 (c) & (g)(2)	Theft of a catalytic converter - unauthorized possession - subsequent conviction	*Lowe objected, motion passed.		3
5-13-209 (a)(1) & (b)(1)	Abuse of an athletic contest official - purpose to cause serious physical injury	Smith	Shue	8
5-13-209 (a)(2) & (b)(2)	Abuse of an athletic contest official- purpose to cause physical injury	Jones	Bell	6
5-36-109 (b)(1)(A) & (b)(2)	Operating a Chop Shop - own, operate, conduct	Blatt	Shue	4
5-36-109 (b)(1)(B) & (b)(2)	Operating a Chop Shop - transport to or from chop shop			4
5-36-109 (b)(1)(C) & (b)(2)	Operating a Chop Shop - sell, transfer, etc.			4
5-36-109 (b)(1)(D) & (b)(2)	Operating a Chop Shop - modify or remove VIN	*Shue moved, Blatt seconded 4, 4, 4, 2 in this batch. After discussion, Blatt moved 4, 4, 4, 4. Shue seconded. Motion passed unanimously.		4
5-36-109 (c)(1) & (c)(2)	Dealing in stolen or forged parts	Robbins	Blatt	2
5-10-202 (a)(1) & (b)(1)	Aggravated death by delivery - victim is adult	Rutledge	Smith	10
5-10-202 (a)(2) & (b)(2)(A)	Aggravated death by delivery - victim is minor			10
5-10-202 (a)(2) & (b)(2)(B)	Aggravated death by delivery - victim is minor < 3 years younger than defendant			10
5-10-203 (a) & (b)(1)	Death by delivery - first degree	Blatt	Rutledge	10
5-10-203 (a) & (b)(2)	Death by delivery - first degree			9
5-10-204 (a)(1)(A) & (b)(1)	Death by delivery - second degree	Blatt	Rutledge	9
5-10-204 (a)(1)(A), (a)(2) & (b)(2)	Death by delivery - second degree	Blatt	Jones	8

Table B: New Offenses

STATUTE	TITLE	Motion By	Seconded By	RANKING
5-10-204 (a)(1)(A) & (b)(3)	Death by delivery - second degree	Blatt	Rutledge	10
5-10-204 (a)(1)(B) & (b)(1)	Death by delivery - second degree - counterfeit substance	Blatt	Shue	9
5-10-204 (a)(1)(B) & (b)(2)	Death by delivery - second degree - counterfeit substance			8
5-10-204 (a)(1)(B) & (b)(3)	Death by delivery - second degree - counterfeit substance			10
5-64-421 (i)(1)(A) & (i)(2)	Possession of fentanyl - predatory marketing	Blatt	Smith	10
5-54-134	Disarming an officer	Blatt	Smith	4
		*Lowe objected, motion passed.		
4-88-1105	Counterfeiting Tickets - Subsequent Offense	Bell	Shue	2
18-11-110 (b) & (d)	Land ownership by foreign-party-controlled business prohibited	Smith	Robbins	2
18-11-704 (e)	Interest in agricultural land owned by prohibited foreign parties			2
5-10-105 (b)(2)	Negligent homicide - deadly weapon	Robbins	Rutledge	3
		*Robbins moved, Collins seconded to rank as 4. After discussion, Robbins amended to 3, Rutledge seconded. Lowe objected, motion passed.		
5-14-112 (b)(2)(B)	Indecent exposure - in custody of correctional of detention facility	Robbins	Bell	2
		*Lowe objected, motion passed.		
5-14-113	Sexual extortion	Bell	Blatt	6
5-36-103 (b)(3)	Theft of property - sub. conviction	Blatt	Shue	4
11-6-103 (i)(2)	Child labor violations - subsequent convictions	Bell	Smith	4
5-70-107 (a)(1) & (d)	Sexual solicitation of a minor - offer/agree to pay a minor	Blatt	Jones	4
5-70-107 (a)(2) & (d)	Sexual solicitation of a minor - offer/agree to pay another person			4
5-70-107 (a)(3) & (d)	Sexual solicitation of a minor - solicit, offer, agree to accept			4
5-70-107 (a)(4) & (d)	Sexual solicitation of a minor - pays to engage			4

Table B: New Offenses

STATUTE	TITLE	Motion By	Seconded By	RANKING
5-54-125 (d)(2)	Fleeing by means of any vehicle or conveyance	Robbins	Jones	3
		*Blatt moved, Shue seconded to rank as 4. After discussion, Blatt withdrew motion.		
5-13-214 (b)(1) & (b)(2)(A)	Knowingly exposing another person to fentanyl in the first degree - certain victims	Rutledge	Shue	10
5-13-214 (b)(1) & (b)(2)(B)	Knowingly exposing another person to fentanyl in the first degree	Blatt	Shue	9
5-13-214 (c)(1) & (c)(2)(A)	Knowingly exposing another person to fentanyl in the second degree- certain victims	Shue	Jones	9
5-13-214 (c)(1) & (c)(2)(B)	Knowingly exposing another person to fentanyl in the second degree	Jones	Blatt	8
5-37-521 (a)	Farm implements - removal or alteration of serial number - conceal or misrepresent identity	Blatt	Shue	2
5-37-521 (b)(1) & (b)(4)	Farm implements - removal or alteration of serial number - purpose to defraud			2
5-37-521 (b)(2) & (b)(4)	Farm implements - removal or alteration of serial number - fictitious			2
27-14-2210	Vehicles or engines without manufacturer's numbers			2
27-101-703	Boating equipment without boating equipment identification number			2
5-29-203 (b)(1)	Abuse of a vulnerable person	Blatt	Smith	6
5-29-203 (b)(2)	Abuse of a vulnerable person			4
5-29-204 (b)(1)	Neglect of a vulnerable person			4
5-29-205 (b)(1)	Exploitation of a vulnerable person			6
5-29-205 (b)(2)	Exploitation of a vulnerable person			4

Table B: New Offenses
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Table C: OMITTED OFFENSES

STATUTE	TITLE	Motion By	Seconded By	RANKING
6-24-115	Knowingly Violating Education Ethical Guidelines	Smith	Shue	2
16-95-105	Escape pursuant to Agreement on Detainers.			2
23-112-603 (a)(2)	Used Motor Vehicle Buyer's Protection- second or subsequent violation			2
23-112-603 (a)(3)	Used Motor Vehicle Buyer's Protection- third or subsequent violation			2
23-112-603 (b)	Selling a used Motor Vehicle as a dealer or salesperson while license is suspended or revoked			*Smith moved and Shue seconded to rank all as 2. Smith amended to rank last one as 3. Shue seconded the amended motion.