



ARKANSAS SENTENCING COMMISSION

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SUBJECT: Impact Assessment Procedures

SUPERSEDES: None

NUMBER: 2022-01

REFERENCE: A.C.A. § 16-90-802 (d)(6)

APPROVED:

A handwritten signature in cursive script that reads "Jawnie Powell".

EFFECTIVE DATE: 09/21/2022

I. Policy

As the executive head of the Arkansas Sentencing Commission (the Commission), it is the responsibility of the Director to establish guidelines for performing the statutory obligations of the Sentencing Commission. As the head of the Commission, it is the responsibility of the Chair of the Arkansas Sentencing Commission to review and approve these guidelines, on behalf of the Commission. This directive is intended to create operational guidelines for performing the Commission's statutory duty to report on bills which will have a projected budgetary impact on the correctional resources of the State.

II. Procedure

A. Monitoring bills for potential impact on correctional resources.

1. Commission staff shall monitor bill filings throughout the legislative session. The Secretary of Corrections may temporarily or permanently reassign staff to assist with this responsibility.
2. Pursuant to A.C.A. § 16-90-802 (d)(6) the Commission must "develop a research and analysis system to determine the feasibility, impact on resources, and budget consequences of any proposed or existing legislation affecting sentence length" and submit the report to the General Assembly prior to adoption of a bill.
3. Based on guidance from the Commission set forth in this directive, staff will analyze bills to determine whether preparation of a fiscal impact assessment is appropriate.

B. Excluding bills for which an impact is not appropriate.

1. Bills that do not create or modify a criminal penalty and are not located in Title 5 or 16 of the Arkansas Code Annotated are not analyzed for fiscal impact purposes.

2. Bills which are not excluded by II.B.1. are analyzed in order to determine if there will be a budget consequence on the correctional resources of the state.
 - a. For bills which may result in correctional savings, staff will pull data for informational purposes, but will not prepare a full fiscal impact assessment. Examples of bills which may result in correctional savings include bills which decriminalize conduct, lessen criminal penalties, or create affirmative defenses.
 - b. For bills which contain criminal provisions but are regulatory in nature, staff will pull data on past convictions for similar conduct but will not prepare a full fiscal impact assessment. An example of a bill amending regulatory criminal provisions is a scope of practice bill.
 - c. For bills containing only clean-up language, but no substantive changes to existing criminal provisions, staff will not perform a full fiscal impact assessment. Examples of bills containing clean-up language include technical corrections bills, bills clarifying definitions, and bills codifying current practices.
3. For bills which are not excluded by Section II.B, a full fiscal impact assessment will be prepared and reported to the General Assembly.

C. Creating fiscal impact assessments.

1. Staff will conduct initial research on Arkansas Code Annotated sections amended by the proposed bill and compile appropriate data.
 - a. For bills which amend existing criminal provisions, staff will pull conviction data from the Administrative Office of the Courts (AOC).
 - b. For bills which amend existing felony provisions, staff will determine the number of offenders currently serving a sentence in the Department of Corrections (DOC) for the offense as currently written.
 - c. If data from the AOC and DOC do not provide enough information to determine the fiscal impact of a proposed bill, staff will examine data from other entities which may supplement this data. These entities include, but are not limited to:
 - i. The Arkansas State Police;
 - ii. The Department of Health;
 - iii. The Federal Bureau of Investigation's Uniform Crime Report; and
 - iv. The Arkansas Crime Information Center.
2. Based on initial data, staff will categorize impacts as either an impact that cannot be determined, a minimal impact, or a potential medium or major impact.

D. Impacts which cannot be determined or are minimal.

1. The impact of a proposed bill cannot be determined if there is insufficient data on occurrences on which to base an impact. This can be for many reasons, including but not limited to:
 - a. The bill creates an entirely new criminal provision.
 - b. The bill expands conduct provisions in existing criminal penalties.
 - c. The bill increases the penalty for only some courses of conduct within an existing criminal offense.
 - i. If the conduct for which penalties are increased is currently reported separately as part of a sub-section, staff will determine whether it is likely that data is being uniformly reported by sub-section. If so, the impact will be analyzed as if data is available.
 - ii. If the conduct for which penalties are being increased is not currently reported separately, staff will report on the entire section with a disclaimer that data does not distinguish between courses of conduct.
 - d. The bill increases a criminal penalty from a misdemeanor to a felony.
 - i. Because misdemeanor convictions are often disposed of in district court, and not all district courts report data to the AOC, existing data on misdemeanor penalties is insufficient to base an impact assessment on.
 - ii. Because misdemeanor convictions are only reported to the DOC when part of a felony sentence to a term of incarceration, this data is not sufficient to base an impact assessment on.
2. The impact of a proposed bill is minimal if the bill is projected to affect fewer than ten (10) offenders per year. This determination may be made for several reasons, including but not limited to:
 - a. Data from the AOC indicates that convictions for the amended offenses average fewer than ten (10) per year.
 - b. Data from the DOC indicates that there are fewer than ten (10) offenders current serving a term of incarceration for the amended offenses.
 - c. Data is unavailable regarding an offense modified or created by the proposed bill, but data from other entities or data on similar provisions indicates that the bill is unlikely to have a significant impact on correctional resources.
3. If an impact is classified as “minimal” or “cannot be determined,” staff will prepare and provide to the Bureau of Legislative Research (BLR) a fiscal impact assessment which contains the following information:

- a. Summary of the projected impact,
- b. Change from current law, and
- c. Impact information detailing why the impact is projected to be minimal or why the impact cannot be determined.

E. Impacts which are Medium or Major

1. Once staff has established that a bill is likely to have either a medium or major impact, staff will engage with the contractor who provides the Prison Population Projections for the State of Arkansas. The contractor utilized for this process will be selected by the Secretary of Corrections pursuant to his or her authority under A.C.A. § 25-43-403 and in accordance with Arkansas Procurement Law.

a. The contractor shall utilize the intake database used to craft the most recent Prison Population Projections to create an admission file. Staff will advise the contractor of the appropriate parameters to use when selecting the offenders for the admissions file. At a minimum, staff will consider the following:

- i. The appropriate code sections to include, and
- ii. Whether to include all offenders with a sentence for the relevant sections, only those for which it is the primary offense, or a portion of those for which the offense is not the primary offense.

- Staff will make this determination after examining the scope of the increase in length of sentence or stay.
- Larger increases will necessitate that a larger number of underlying offenses be considered because it is less likely that a more serious offense will cover up the increase in time.

b. Once the admissions file is created, staff and the contractor will coordinate to determine what the assumed increase in sentence or length of stay should be.

i. An increased length of sentence will be used when an increase in the felony class is being proposed or when a mandatory minimum sentence is being proposed for a criminal offense.

- This may be determined by the difference in average length of sentence for all admission for a felony class.
- In some circumstances, staff may consider narrowing the offenses considered in determining average length of sentence in order to get a more accurate number. For example, if a bill proposes an increase

to felony class for a drug offense, it may be appropriate to consider only length of sentence for offenses in Chapter 64 of the Arkansas Criminal Code.

- ii. An increased length of stay will be used when a change to parole eligibility is proposed.
 - This may be because the bill specifically changes parole eligibility for an offense or group of offenses.
 - In some circumstances, it may be because increasing the classification of the offense may result in the offense being re-ranked which may result in a change to transfer eligibility. For example, Intimidating a Juror is currently a Class B felony ranked by the Sentencing Commission as a Seriousness Level 6, placing it below the transfer eligibility line. Because the transfer eligibility line is between seriousness levels 6 and 7, a bill which proposes raising the felony classification of Intimidating a Juror to a Class A felony could also result in a higher Seriousness Level ranking and offenders being required to serve a higher percentage of their sentence before becoming eligible for parole.
 - A change in length of stay should require fewer assumptions because the change is straightforward and has less influence from external stimuli.
 - c. After staff determines the admissions file and the assumed changes in length of sentence and/or length of stay, the contractor will input the admissions file into a microsimulation model which tracks offender movement through the correctional system to determine the annual bedspace impact. The contractor will provide this data to the staff of the Commission. Staff will use the data to assemble a preliminary impact.
2. After the preliminary impact is determined, staff will analyze the impact for potential reductions.
- a. Potential reductions shall include an offset for any averted supervision costs or averted cost of care for parole violators. If staff requires additional information from the contractor in order to make these determinations, staff will direct the contractor to analyze the admissions file and provide staff with the information.
 - b. Staff will coordinate with other entities as appropriate when determining offset amounts.

- c. Due to a lack of empirical data to support the reduction, staff shall not make reductions to account for changes in offender behavior or potential changes in sentencing practice.
 - d. If staff determines that reductions need to be made, the contractor will conduct an additional simulation and reduce the bedspace impact accordingly.
- 3. If the bedspace impact, after reduction for averted cost, does not reach the threshold of ten (10) beds per year, the impact will be re-categorized as a minimal impact.
- 4. If the bedspace impact remains over the threshold of ten (10) beds per year, staff shall consult with the Secretary of Corrections, or his or her designee, on whether, in his or her opinion, the increase in population can be absorbed as a part of normal growth, or whether the proposed bill will require that new beds be constructed.
 - a. If staff determines that the increase in population can be absorbed as part of normal growth, the bill will be classified as having a medium impact.
 - b. If staff determines that the increase in population will require that new prison beds will need to be constructed due to the proposed bill, the bill will be classified as having a major impact. Construction costs shall be provided by the Department of Corrections and will not be included in the fiscal impact assessment.
- 5. If a bill is projected to have a medium or major impact, staff will send a copy of the preliminary impact to the primary sponsor of the bill prior to sending the final impact to BLR for publication. Upon finalizing the impact, a copy will be forwarded to the following individuals.
 - a. The Governor's Office (via the Commissions Liaison to the Governor;
 - b. Members of the Arkansas Sentencing Commission,
 - c. The Secretary of Corrections, and.
 - d. The Chair of the Board of Corrections and the Board's Administrative Assistant.

III. Review of Procedures

The Commission shall review these procedures no later than November 1st of each year preceding a Regular Session of the General Assembly.