Same Grid, Different Results: Criminal Sentencing Disparities Between Arkansas Counties

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SAME GRID, DIFFERENT RESULTS:
CRIMINAL SENTENCING DISPARITIES
BETWEEN ARKANSAS COUNTIES

Alexis Stevens

I. INTRODUCTION

A. Prosecutorial Discretion at Play

Abraham Davis is a resident of Fort Smith, Arkansas—and a convicted felon.\(^1\) In May of 2017, the Sebastian County Circuit Court, Fort Smith District, charged Davis with criminal mischief in the first degree, as a Class D felony, for purposely destroying the property of another.\(^2\) Davis’s charge resulted in a criminal sentence ranging from as little as probation to as much as 6 years jail time and/or up to $10,000.00 in fines.\(^3\) This sentencing determination is generally allocated to the judge and prosecutor.\(^4\) However, victim intervention persuaded the court to release Davis on probation,\(^5\) sparing him from a much harsher sentence. Were it not for victim interference, the court stated, it “would not have done [probation] . . . . [Davis] would have gone to trial, and there is a good chance [he] would have gone to prison.”\(^6\)

Davis’s story began in October of 2016 when he agreed to drive a friend to a local mosque.\(^7\) His friend vandalized the building, leaving swastikas and a litany of curses plastered across the mosque’s windows and doors.\(^8\) Meanwhile, Davis “stood watch

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2. Id. See also ARK. CODE ANN. § 5-38-203 (2013).
3. See Davis Sentencing Order, supra note 1, at 1; ARK. CODE ANN. § 5-4-401(a)(5) (2019); ARK. CODE ANN. § 5-4-201(a)(2) (2009).
4. See discussion infra Section I.B.
5. Davis Sentencing Order, supra note 1, at 1.
7. Id.
8. Id.
in the driveway.” Time passed, but Davis’s regret did not. About four months later, the police attempted to execute an arrest warrant at Davis’s house for his involvement in the vandalization. Davis was not present when the police arrived, however, he turned himself in as soon as he received notification of their visit. Without $1,580.00 to pay for bail, Davis became the third person crammed into a small, two-man cell at the Sebastian County Detention Center. Five days in, a guard handed out letter materials to the detainees. Davis took the paper and started to write.

“In his letter, Davis expressed regret for his actions, taking full responsibility for what he had done. He did not ask for the mosque’s forgiveness or its sympathy, but rather wrote the letter solely to apologize for the vandalism. Dr. Louay Nassri, the president of Al Salam Mosque, was “moved” by Davis’s words and conduct. After conferring with the mosque’s senior members, Dr. Nassri met with the prosecutor’s office. During the meeting, “he made clear that the mosque did not want to press charges and strongly opposed a felony charge for [Davis].” “We did not want this to destroy his life,” Dr. Nassri later said.

The members of Al Salam Mosque persistently attempted to help Davis and mitigate his punishment. In a second meeting with Dr. Nassri, prosecutors explained that Davis would have to plead guilty to a felony or go to trial. But at trial, he would likely receive a harsher sentence. By accepting the plea, Davis “would avoid prison, but only if he remained on good behavior for three

9. Id.
10. Id.
12. Id.
13. Id.
14. Id.
15. Id. (internal quotation marks omitted).
17. Id.
18. Id.
19. Id.
20. Id.
21. Tavernise, supra note 6 (internal quotation marks omitted).
22. Id.
23. Id.
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years.”24 However, Davis would also become a convicted felon, and “[a]ny minor violation” would send him to prison for six years.25 In an attempt to reduce Davis’s property damage charge from a felony to a misdemeanor, Dr. Nassri submitted paperwork showing cleanup costs of only $500.00.26 The prosecutor’s office, however, opted for their own estimate of $1,800.00 which maintained Davis’s felony charge.27

Despite the victims’ strong opposition to a felony charge, prosecutors maintained that “actions had consequences and that [Davis] had participated.”28 During Davis’s May 24th hearing, prosecutors noted the victims’ requests for “mercy and leniency.”29 Although, the judge accepted the victims’ pleas, he rebuked the defendants:

If the victims in this case had not approved of this, I would not have done it[.] . . . You would have gone to trial, and there is a good chance all three of you would have gone to prison. So you need to think twice before you do something, which is just stupid. What you did was just stupid.30

Davis is now a convicted felon—a small price to pay for what could have happened. Had the victims of Davis’s crime not intervened, then what? If Davis were solely at the mercy of the county prosecutors, judges, and jury, he would likely be joining the roughly 26,000 other people sitting in Arkansas’s jail and prison cells at this very moment.31 Among him would be many other non-violent offenders who are becoming a part of Arkansas’s much larger issue: sentencing disparities.

Despite state-wide uniform sentencing guidelines, non-violent drug offenders in Arkansas counties are frequently given significantly disparate sentences depending on offender location. This Comment contends that Arkansas should create a commission to review prosecutor conduct to ensure more uniform

24. Id. See also Davis Sentencing Order, supra note 1, at 1, 3.
26. See Id.
27. Id.
28. Id.
29. Id. (internal quotation marks omitted).
sentencing. Part I explains how criminal sentencing works in Arkansas and describes the role of prosecutorial discretion. Through an empirical study, Part II illustrates the existing problem of disparate, non-violent drug offender punishments by comparing sentences in nearby Arkansas counties. Part III then argues that implementation of a commission to review prosecutorial conduct would provide the requisite oversight to ensure more uniform sentencing for criminal defendants and also analyzes one such commission.

B. How Arkansas Criminal Sentencing Works

In 1993, identical Acts 532 and 550 of 1993 (the Acts) created the Arkansas Sentencing Commission to oversee numerous facets of criminal sentencing and to promulgate sentencing guidelines for the courts.32 The Arkansas Sentencing Commission’s stated purpose “is to establish sentencing standards and to monitor and assess the impact of practices, policies, and existing laws on the correctional resources of the state.”33 The Acts additionally authorized the creation of the Arkansas Sentencing Standards Grid (Sentencing Standards Grid) and Seriousness Rankings.34 Four statutes, sections 16-90-801 to -804 of the Arkansas Code, codified the Acts into law.35

The Sentencing Standards Grid is intended for use by prosecutors, defense attorneys, judges, or anyone “directly involved in sentencing”; however, its guidelines are not binding on sentencing courts.36 The Sentencing Standards Grid’s purpose is to provide punishments that are proportional to both the seriousness of the underlying offense and the offender’s criminal history, thus ensuring equitable sentencing statewide.37 Beginning January 1,
1994, the appropriate cell of the Sentencing Standards Grid determines the “presumptive sentence” for any felony offender. The two axes of the Sentencing Standards Grid represent the primary factors of a criminal sentence: “offense seriousness and offender history.”

In reaching an offender’s punishment, the court first determines the presumptive sentence using offense seriousness and offender history. The vertical axis represents offense seriousness, which is determined by the following criteria: (1) the offense of conviction; (2) the offense to which a defendant is found guilty; or (3) the offense to which a defendant “pleaded guilty or nolo contendere.”

Felony offenses are divided into levels of seriousness, ranging from one to ten. Level “I” represents the lowest level of seriousness, and “X” represents the highest. Notably, inchoate offenses are generally ranked one seriousness level below the ranking of the underlying substantive offense. The horizontal axis of the Sentencing Standards Grid represents an offender’s criminal history score. Criminal history scores are computed based on prior felony or misdemeanor records, prior juvenile records (under certain circumstances), and “[c]ustodial status at the time of the offense.” Section 16-90-803 allocates a specific weight, in points, to each of the criterion. The total number of points accrued by an offender determines their criminal history score. The intersection of the two axes on the Sentencing Standards Grid—offense seriousness and criminal history score—determines the presumptive sentence of an offender. Thus, as an individual’s criminal history score and offense seriousness increase, so too does the “presumptive sentence” for that offender.

Each cell of the Sentencing Standards Grid contains a presumptive sentence. This suggested punishment provides up to three options for the sentencing judge: (1) admission to the Arkansas Department of Corrections (ADC); (2) admission to a Community Corrections Center (CCC); or (3) Alternative Sentencing (AS).

Some cells have only one or two recommended punishments, while other cells leave all options available. Initially, use of the Sentencing Standards Grid provided a single number for a presumptive sentence, and that number represented the suggested sentence, in months, at the ADC. But that process changed when the Council of State Government (CSG) conducted an eighteen-month study of Arkansas’s criminal justice system. CSG’s study revealed “that 1,015 people in 2014 were sent to prison even though the [Sentencing Standards] grid suggested alternative sentencing” or commission to a CCC. With Arkansas having “the third-fastest growing prison system in the nation,” deviations from the Sentencing Standards Grid only exacerbate the state’s pre-existing prison overpopulation problem. Commonplace sentencing discrepancies and prison overcrowding, among other factors, led CSG to propose changes to Arkansas’s criminal justice system. Many of these changes manifested themselves in Arkansas Act 423 of 2017, or “The Criminal Justice Efficiency and Safety Act.”

Notably, this Act changed the presumptive sentence from a single-month value to a range of months for each cell of the

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50. ASC, 2018 BENCHBOOK, supra note 36.
51. Id. at 3-4.
52. Id. at 3.
53. Id. at 1; see also infra Appendix B: Original Arkansas Sentencing Standards Grid.
54. Jacob Rosenberg, Arkansas Sentencing Changes, ARK. TIMES (June 29, 2017), [https://perma.cc/DKB9-Z64T].
55. Id.
56. David Reutter, Overcrowding in Arkansas Prisons, Jails Spurs Call for Reforms, PRISON LEGAL NEWS (March 9, 2017), [https://perma.cc/Y4HF-WBHQ]. In August of 2015, the ADC had 19,000 prisoners—“3,000 more than its manageable population limit.” “To help decrease the [ADC]’s population burdens, county jails began to take the state’s overflow prisoners. Such measures, however, have resulted in jails filled to capacity or above... Statewide, there are around 2,700 prisoners awaiting transfer to an [ADC] facility.” Id.
57. See Rosenberg, supra note 54.
58. Id. (internal quotation marks omitted).
Sentencing Standards Grid containing sentences to the ADC.\textsuperscript{59} Beginning January 1, 2018, this presumptive sentence range replaced the single-month duration found in the 1994-2017 Sentencing Standards Grid.\textsuperscript{60} Unsurprisingly, every crime and offender is different, and sentencing is not a one-size-fits-all approach. A presumptive sentence with a single duration, however, attempts to make that approach work for every offender that falls within the same cell. Alternatively, the range approach highlights the minimum and maximum suggested months for a judge to sentence between.\textsuperscript{61} This range approach will ideally provide the right amount of sentencing discretion and put an end to unsubstantiated deviations, thereby reducing sentencing discrepancies and bringing the overall Sentencing Standards Grid further into compliance.\textsuperscript{62}

But determining the presumptive sentence is just that: presumptive. Additional rules and factors are relevant. For instance, if a presumptive sentence falls above or below the maximum or minimum statutory ranges, then the statutory range shall govern over the presumptive sentence.\textsuperscript{63} As stated in the Arkansas Sentencing Commission’s Benchbook, “[t]he presumptive sentence is not intended to be the sentence in a particular case unless . . . the offense represents a typical case” based on the knowledge and experience of the prosecutor, the defense attorney, and/or the judge.\textsuperscript{64}

After the presumptive sentence is determined, the court next adjusts the punishment depending on aggravating and mitigating factors. In the event of an atypical case,\textsuperscript{65} the Arkansas Code outlines the procedure for departing from a presumptive sentence.\textsuperscript{66} Departures generally take two forms: durational and

\begin{itemize}
  \item \textsuperscript{59} ASC, 2018 \textit{BENCHBOOK}, supra note 36, at 1, 3; see also infra Appendix B.
  \item \textsuperscript{60} ASC, 2018 \textit{BENCHBOOK}, supra note 36, at 1, 3; see also infra Appendix B.
  \item \textsuperscript{61} See infra Appendix A.
  \item \textsuperscript{62} Rosenberg, supra note 54.
  \item \textsuperscript{63} \textsc{Ark. Code Ann.} § 16-90-803(b)(3)(C) (2017).
  \item \textsuperscript{64} ASC, 2018 \textit{BENCHBOOK}, supra note 36, at 1 (emphasis omitted in part).
  \item \textsuperscript{65} An “atypical case” is a case that concerns aggravating and/or mitigating factors. See \textsc{Ark. Code Ann.} § 16-90-804(a), (c) (2018).
  \item \textsuperscript{66} \textsc{Ark. Code Ann.} § 16-90-804.
\end{itemize}
dispositional.67 “A durational departure occurs when the imposed months are higher or lower than the presumptive ADC sentence,” while “[a] dispositional departure occurs when the type of sanction [an offender receives] is not listed as an option for the presumptive sentence.”68 Departure from the presumptive sentence may be justified when there are aggravating or mitigating factors at play.69 Arkansas Code Annotated section 16-90-804 enumerates a nonexclusive list of factors that can be considered as a reason for departure from the presumptive sentence.70 Generally, mitigating factors lower the presumptive sentence while aggravating factors increase it.71 When departure from a presumptive sentence occurs, the court must list written reasons on the offender’s Sentencing Order.72 However, these written departure reasons are not required in probation revocation proceedings because the sentencing guidelines do not apply to these kinds of proceedings.73 Notably, Arkansas currently does not have an appellate review for offender-based challenges relating to sentencing guidelines.74

After an offender’s sentence is determined, a Sentencing Order75 must be filled out and sent to the correctional department where the offender will serve their punishment.76 Beginning January 1, 2012, Arkansas courts are required to use the Sentencing Order.77 The Sentencing Order “replaces and combines the former Judgment and Commitment, Judgment and Disposition, and Departure Report forms.”78 The purpose of the Sentencing Order “is to document the disposition of criminal cases processed in

67. See FAQs, ARK. SENTENCING COMM’N, [https://perma.cc/45NG-UQ4R] [hereinafter ASC, FAQs].
68. Id.
75. See infra Appendix C.
76. ASC, FAQs, supra note 67.
77. Ark. Code Ann. § 16-90-402 (2019); see also ASC, FAQs, supra note 67.
78. ASC, FAQs, supra note 67.
[Arkansas’s] circuit courts”, and to provide the “legal basis” for Arkansas prisons and jails, such as the ADC, to exercise “custody and community supervision [over] an offender.”

The Sentencing Order includes a section for each offense, with a listed sentencing option, to indicate the defendant’s sentence. The listed sentencing options include Imposed, Probation, SIS, or Other. The Imposed option is used when an offender is sentenced to a term of incarceration. Check boxes indicate whether and where incarceration will take place—in an ADC facility, a sentence to the ADC with a judicial transfer (Jud. Tran.) to the Arkansas Department of Community Correction (ACC), or a term of incarceration in a county jail—and also indicate the number of months imposed. The Probation option is used when an offender is placed on probation, and SIS is chosen when the offender is placed on Suspended Imposition of Sentence (SIS), meaning that the offender is initially placed on probation, but upon violation of that probation the offender may be sentenced to the full range of punishment for that particular crime for which they were convicted. Probation and SIS may be used independently or in conjunction with a term of incarceration on the Sentencing Order. If the SIS sentence includes a term of incarceration (Probation/SIS Plus) then the length of incarceration is enumerated. The final option, “Other,” is “used when an offender receives a sentence of Life, Life Without Parole (LWOP), or Death.”

Aside from sentence-specific information, the Sentencing Order also provides personal information about the offender, information about the crime(s) committed, judge and court information, victim information, and departure information, among other details.
While the Sentencing Standards Grid makes alternative sentencing available for more than half of its cells, probation and SIS are prohibited for certain crimes and cannot be used on the Sentencing Order.\(^\text{89}\) Section 5-4-104(e)(1)(A) bars probation and SIS as to a term of imprisonment for the following offenses: (1) capital murder; (2) treason; (3) class Y felonies; (4) DWIs; (5) second degree murder; and (6) engaging in a continuing criminal enterprise.\(^\text{90}\) While class Y felonies are clearly ineligible for probation or SIS, “Act 192 of 1993 amended both [section 5-4-104(e)(1)(A) and section 5-4-301(a)(1)] to permit suspension and probation as alternative sentences for Class Y drug offenses.”\(^\text{91}\) Outside of these specifically enumerated exceptions, all appropriate punishments are generally available for use on the Sentencing Order.

Thus, before a judge pronounces a sentence, a number of steps occur. Specifically, the judge: (1) determines offense seriousness; (2) calculates the offender’s criminal history score; (3) determines the presumptive sentence by using the intersection of these two numbers on the Sentencing Standards Grid; (4) considers aggravating and mitigating factors that increase and decrease the presumptive sentence; (5) selects a sentence according to knowledge, experience, the facts of the case, and the presumptive sentence; and (6) completes a Sentencing Order reflecting the chosen punishment for the offender, and sends it to the appropriate correctional department.\(^\text{92}\) Again, this entire procedure is wholly voluntary, but any departure from the presumptive sentence must be documented, with reasons, in writing.\(^\text{93}\) Once the Sentencing Order is completed and sent to the requisite facility, criminal sentencing for an offender is finished.\(^\text{94}\)

Although it seems that judges are highly involved, prosecutors also play a significant role in criminal sentencing. Prior to the creation of the Arkansas Sentencing Commission and the Sentencing Standards Grid, criminal sentences were the product of

\(^{89}\) ASC, \textit{FAQs}, supra note 67.
\(^{90}\) ARK. CODE ANN. § 5-4-104(e)(1)(A) (2019); see also ASC, \textit{FAQs}, supra note 67.
\(^{92}\) See discussion supra Section I.B.
\(^{94}\) See ASC, \textit{FAQs}, supra note 67.
both judicial and prosecutorial discretion. Prosecutors historically chose the charge, or charges, and the judge—based on that decision—sentenced within a broad statutory range. However, implementation of the Sentencing Standards Grid reduced judicial discretion, yet left prosecutorial discretion undisturbed. “The term ‘prosecutorial discretion’ refers to the fact that under American law, government prosecuting attorneys have nearly absolute and unreviewable power to choose whether or not to bring criminal charges, and what charges to bring.” Ultimately, prosecutors have two core discretionary choices: (1) the crimes charged; and (2) the plea agreements to enter. Although the prosecutor’s charging decision is subject to some limited constraints, a prosecutor’s decision to pursue a case is not restrained by any significant barriers.

Depending on the structure of a prosecutor’s office, discretion may reside solely with the head prosecuting attorney or may be distributed amongst all deputy prosecutors. Many prosecutor offices have written policies to guide the charging decisions of individual deputy prosecutors. If these guidelines are vague, or only provide general guidance, then a considerable amount of discretion remains with each individual prosecutor. More stringent guidelines, however, shift discretionary charging decisions from individual prosecutors to the head prosecuting attorney of a particular office.

The concept of prosecutorial discretion in the criminal justice system is not without its critics. First, some argue that
prosecutors are not held to the constitutional norms required by our criminal justice system.\textsuperscript{105} For example, critics point both to the absence of rules governing prosecutorial charging decisions and to the absence of meaningful outside review of those same charging decisions.\textsuperscript{106} Prosecutorial discretion also raises equal protection concerns.\textsuperscript{107} One prominent critic has noted, “giving prosecutors the power to invoke or deny punishment at their discretion raises the prospect that society’s most fundamental sanctions will be imposed arbitrarily and capriciously and that the least favored members of the community—racial and ethnic minorities, social outcasts, the poor—will be treated more harshly.”\textsuperscript{108} Finally, critics argue that prosecutors are not the appropriate party to make charging decisions.\textsuperscript{109} Because prosecutors undeniably advocate for a particular side in the criminal justice system, detractors assert that prosecutors lack the requisite neutrality to balance societal interests with charging decisions.\textsuperscript{110}

Superficially, criminal punishment in Arkansas seems to follow a relatively straightforward Sentencing Standards Grid. Further examination, however, reveals numerous discretionary steps before an offender is sentenced, resulting in statewide punishment disparities.\textsuperscript{111} Before any sentencing decision even reaches a judge, the prosecutor must make a charging decision and determine the viability of any plea offer.\textsuperscript{112} The judge, supported by the prosecutor’s charges, then considers multiple factors for sentencing: offense seriousness, criminal history score, and aggravating and/or mitigating factors.\textsuperscript{113} Consequently, offender punishment is subject to discretionary decisions at numerous points of the sentencing process. Although discretion is a necessary component of Arkansas’s criminal justice system, leaving it

\textsuperscript{105} DRESSLER \& MICHAELS, supra note 95, at 117.
\textsuperscript{106} Id.
\textsuperscript{107} Id. at 117-18.
\textsuperscript{108} Id. at 118 (quoting James Vorenberg, Decent Restraint of Prosecutorial Power, 94 HARV. L. REV. 1554-55 (1981)) (internal quotation marks omitted, and alteration adopted).
\textsuperscript{109} Id.
\textsuperscript{110} DRESSLER \& MICHAELS, supra note 95, at 118.
\textsuperscript{111} See generally id. at 113-16, 199.
\textsuperscript{112} Id.
\textsuperscript{113} See infra Appendix C.
unchecked could undermine the state’s criminal sentencing goal: proportional and equitable offender punishments statewide.\textsuperscript{114}

\section{NON-VIOLENT DRUG OFFENDER SENTENCES: WASHINGTON V. SEBASTIAN COUNTY}

To demonstrate the problem of sentencing disparities between Arkansas counties, this Comment examines the sentences for non-violent drug offenders in Washington and Sebastian County.\textsuperscript{115} In this study, non-violent drug offenders are defendants who had at least one felony drug charge and no charges for crimes in which the offender used or threatened to use force upon a victim.\textsuperscript{116} Drug charges include any violation of law that prohibited or regulated “the possession, use, distribution, or manufacture of illegal drugs.”\textsuperscript{117} To collect the relevant data, this Comment relies on four weeks’ worth of Sentencing Orders from both Washington and Sebastian County. In Arkansas, Sentencing Orders are public record.\textsuperscript{118} This Comment separates non-violent

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\textsuperscript{114} Despite uniform state sentencing guidelines, criminal offenders in Arkansas receive dramatically different sentences depending on offender location. The problem of sentencing disparities between Arkansas counties is continuing to garner attention from prosecutors, defense attorneys, and judges across the state. To substantiate the problem, this Comment conducts an empirical study of criminal sentencing in two Arkansas counties. Although the counties are geographically close, their sentencing is not. Legal professionals practicing in Arkansas took specific notice of the vastly different sentences that defendants received in Sebastian County compared to Washington County and brought the issue to the author’s attention for evaluation. To validate the claim, this Comment reviews a small subset of defendants—non-violent drug offenders. This Comment selected non-violent drug offenders for the empirical study for multiple reasons. First, more sentencing orders existed for non-violent drug offender crimes than for other specific or more severe crimes and, thus, provided more data for the study. Second, depending on the offense seriousness and the offender’s criminal history score, the Sentencing Standards Grid often provided for a presumptive sentence that had two or more forms of suggested punishment. Accordingly, these types of crimes provided more sentencing discretion. Finally, non-violent drug offenses do not implicate many of the aggravating and mitigating factors with the exception of two frequently used factors. In turn, this greatly reduces one externality potentially attributable to sentencing variations. This Comment analyzes sentencing orders for seventy-nine non-violent-drug offenders, as more specifically defined in Part II. See infra text accompanying notes 115-19.

\textsuperscript{115} Alexis Stevens, Review of Washington and Sebastian County Sentencing Orders (data on file with author) [hereinafter Stevens, Review of Sentencing Orders].

\textsuperscript{116} Id.


\textsuperscript{118} See generally AOC PUBLIC COURTCONNECT, [https://perma.cc/YJ4L-JN2B] (last visited Feb. 24, 2019).
\end{flushright}
drug offenses from each set of Sentencing Orders and examines the sentence for each defendant. In addition to the final sentence, this Comment collects data on criminal history scores, offense seriousness, presumptive sentences, and departures.

One defendant from the study, Travis Colt Hagar, received a severe sentence for three drug charges: Possession of Methamphetamine, Possession of Drug Paraphernalia, and Possession of Marijuana. The first two charges were classified as D felonies and the marijuana charge was classified as an A misdemeanor. Hagar had a criminal history score of zero, and both felony charges carried an offense seriousness weight of three. Looking to the Arkansas Sentencing Standards Grid, this means Hagar’s presumptive sentence would have been a sentence to a CCC or an Alternative Sentence, such as probation or SIS. However, the Sebastian County Circuit Court sentenced Hagar to serve concurrent thirty-six-month terms in the ADC for the methamphetamine charge and the possession of drug paraphernalia charge, and a concurrent twelve-month term in the county jail for the possession of marijuana charge.

Collectively, Hagar was ultimately sentenced to serve three years in the ADC, with three years conditioned upon good behavior, for three drug charges. The court justified its departure by citing aggravating factor number fourteen, “[m]ultiple concurrent sentences being entered at this time require a higher sentence.” Of the Washington County Sentencing Orders, seven defendants shared two of Hagar’s felony charges. Of those seven defendants, three had their charges dismissed or nolle prossed, three were placed on probation, and one received probation plus a

119. For purposes of this study, only original sentences for a particular charge were used. The sentences do not include any probation, parole, or SIS revocations. See Stevens, Review of Sentencing Orders, supra note 115.
122. Id.
123. See infra Appendix A.
125. Id.
126. See infra Appendix C.
seventy-five-day period of confinement. Although all of the defendants received a lesser sentence than Hagar, three of them had a higher reported criminal history score, and two defendants had more charges.

Hagar’s case is not anomalous. Clate Alan Leonard, a Sebastian County defendant, also received a class C felony, class D felony, and two A misdemeanor charges for: Possession of Methamphetamine, Possession of Drug Paraphernalia, Possession of Marijuana, and Possession of Clonazepam, respectively. Leonard reflected a criminal history score of two, with offense seriousness ranging from three to four. For each felony charge Leonard received forty-eight months in the ADC with seventy-two months SIS and forty-eight months in the ADC with twenty-four months SIS, respectively. The court sentenced Leonard to twelve months in the county jail for each misdemeanor charge. Because the sentence was set to run concurrently and Leonard’s time at the ADC satisfied the county jail sentence, he was ultimately sentenced to serve four years in the Department of Corrections with six additional years conditioned upon good behavior. Roughly translated, Leonard could spend as many as ten years in prison for just two felony drug charges. Sebastian County justified its departure from the presumptive sentence for the possession of drug paraphernalia charge by relying on aggravating factor fifteen, “[s]entence is higher as a result of other charges being dropped or merged.”

The problem of inconsistent sentencing practices persists in the context of habitual offenders, offenders already serving out some form of Alternative Sanction, or offenders with a high criminal history score. Take, for instance, Cameron Lamont Smith who was charged—while on SIS—with Delivery of Cocaine, Possession of Cocaine with Purpose to Deliver, and Possession of Marijuana with Purpose to Deliver, Class C, B, and C felonies.

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128. *Id.*
129. *Id.*
131. *Id.*
132. *Id.*
133. *Id.*
134. *Id.*
135. See *infra* Appendix C; see also ARK. CODE ANN. § 16-90-804 (2018).
respectively.\textsuperscript{136} Because Smith’s criminal history score was ranked as a 5+ and the offense seriousness ranged from 4 to 6 for his crimes, his presumptive sentence suggested as long as 240 months in prison.\textsuperscript{137} But Smith ultimately received 336 months, or 28 years, in prison for the 3 non-violent drug charges.\textsuperscript{138}

Defendants like Hagar, Leonard, and Smith merely illustrate Arkansas’s lack of uniform sentencing. In just a four-week timespan, Sebastian County convicted twenty-two defendants on controlled substance charges alone.\textsuperscript{139} Of those twenty-two defendants, seven received sentences that were upward durational or dispositional departures from the Sentencing Standards Grid, or thirty-two percent of the defendants.\textsuperscript{140} Only two of the defendants that received departures were reportedly already on probation, parole, or SIS.\textsuperscript{141} Every Sebastian County departure was justified with aggravating factor number fourteen, “[m]ultiple concurrent sentences being entered at this time require a higher sentence,” or fifteen, “[s]entence is higher as a result of other charges being dropped or merged.”\textsuperscript{142} Between the twenty-two defendants, there were forty-seven felony drug charges in total, fourteen of which Sebastian County reported an upward departure on.\textsuperscript{143} This means that Sebastian County departed from the Sentencing Standards Grid roughly thirty percent of the time in just a four-week period.\textsuperscript{144}

In the same four-week span, Washington County convicted fifty-seven defendants on felony controlled substances charges.\textsuperscript{145} Only four of the fifty-seven defendants, or seven percent, received upward departures from their presumptive sentences.\textsuperscript{146} However, only one of the defendants that received the heightened

\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} Stevens, Review of Sentencing Orders, supra note 115.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} \textit{infra} Appendix C (relying on authority provided by \textsc{Ark. Code Ann.} § 16-90-804 (2018)); see also Stevens, Review of Sentencing Orders, supra note 115.
\textsuperscript{143} Stevens, Review of Sentencing Orders, supra note 115.
\textsuperscript{144} Id.
\textsuperscript{145} Id.
\textsuperscript{146} Id.
sentence was not reportedly under some kind of supervision, such as probation, parole, or SIS, when they committed the felonies. In total, Washington County sentenced 123 felony drug charges with only 5 reported upward departures, meaning that Washington County only departed from the Sentencing Standards Grid in about 4 percent of charges compared to Sebastian County’s 30 percent.\footnote{Stevens, Review of Sentencing Orders, supra note 115.}

Unfortunately, departure frequency is not the only existing problem. Sebastian County also sentenced more severely based on the offender’s presumptive sentence. When all options were available—ADC, CCC, or AS—Sebastian County sentenced defendants to a term of incarceration at the ADC fifty-eight percent of the time, a term of incarceration at a CCC facility in eight percent of convictions, or Alternatively Sentenced the defendant thirty-three percent of the time.\footnote{Id.} These sentences were dramatically higher than Washington County, who—when all options were available—sentenced offenders to incarceration at an ADC facility in eleven percent of charges, incarceration at a CCC facility in thirty-four percent, and Alternative Sentencing in fifty-five percent.\footnote{Id.} Similarly, out of all felony drug charges Sebastian County dismissed or nolle prossed the charges about nine percent of the time while Washington County dismissed or nolle prossed about twenty-two percent of controlled substance charges.\footnote{Id.}

Although this case study only looks at controlled substance convictions with felony classifications over a four-week timeframe in two Arkansas counties, the problem is not that narrow. Sentencing disparities involve all crimes, at all times, in all Arkansas counties. It is not just a Washington County versus Sebastian County problem. It is statewide. The above-highlighted disparities only focus on narrow offender criterion during an infinitesimal conviction period. If the study was pulled back to examine all criminal sentences across all Arkansas counties for more than a mere four weeks, how many offenders would we witness receiving dramatically different sentences depending on offender location?
This is not a new phenomenon to Arkansas, but rather a problem that has yet to receive a viable solution. With the fastest growing prison rate in the country,\textsuperscript{151} and overloaded probation and parole officers,\textsuperscript{152} the state’s criminal justice resources are already stretched thin. Arkansas has responded by enlisting the help and suggestions of the CSG and implementing adjustments to the Sentencing Standards Grid.\textsuperscript{153} Yet, after employing the new presumptive sentence ranges, offenders still receive dramatically different criminal sentences, and, once a sentence is entered for an offender, it is generally “game over.” Defendants in Arkansas can appeal a criminal conviction in its entirety, a process that is both costly, time consuming, and not practical for many criminal defendants, but there is currently no way to have a sentence objectively reviewed.\textsuperscript{154} This means that all the discretionary forces at play, such as prosecutor charging decisions, consistently go unchecked. The sentence received is the most important outcome for every defendant; it determines whether they will walk a free man or be stripped of their fundamental rights. Thus far, Arkansas’s criminal sentencing has fallen short of its proclaimed goal—equitable sentencing statewide. That is why it is time for Arkansas to try a new approach: a commission to review prosecutorial conduct.

III. ADOPTION OF A STATE COMMISSION TO REVIEW PROSECUTORIAL CONDUCT

Criminal defendants in Arkansas have an absolute right to appeal their conviction within thirty days.\textsuperscript{155} Appeals, however, are often challenging given the costs and risks for certain defendants. For instance, a defendant seeking to appeal a conviction will have to pay additional attorney’s fees and court costs, and will

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\item[151.] Lindsey Millar, More Reminders of How Bad Arkansas’s Prison, Parole and Probation Systems Are, ARK. TIMES (June 22, 2016), [https://perma.cc/Q388-7W9C].
\item[152.] Id. ("Arkansas probation and parole officers average 129 cases per caseworker.").
\item[153.] See discussion supra Section I.B.
\item[154.] See Hill v. State, 318 Ark. 408, 413-14, 887 S.W.2d 275, 278 (1994) (explaining that a court will not review a sentence for excessiveness when it is within the range prescribed by statute for the charge); P. H. Vartanian, Annotation, Duty and Discretion of District Attorney as Regards Prosecution for Criminal Offenses, 155 A.L.R. 10 (1945) ("Prosecutors have broad discretion in charging decisions.").
\item[155.] ARK. R. APP. P.—CRIM. 1-2.
\end{enumerate}
\end{footnotesize}
also have to pay for a copy of the transcript from the lower court—except in certain limited circumstances. A defendant will not only continue to suffer a monetary burden if he or she chooses to appeal a conviction but may also expose themselves to additional risks in the process. Although some appeals—such as an appeal on the sufficiency of the evidence—may come with little or no danger, other appeals can result in a new trial for the defendant. In such instance, a defendant on appeal risks having an initial sentence replaced with a more severe sentence.

Direct appeals aside, a defendant may only reverse a judgment by filing a Rule 37 Petition for Ineffective Assistance of Counsel. A Rule 37 Petition claims that a trial attorney made errors in a defendant’s case which contributed to a difference in the defendant’s conviction. Given Arkansas defendants’ narrow options for appeal, sentencing disparities and departures may go unquestioned. As a result, discretion also goes unchecked, allowing potential abuses of prosecutorial discretion to become inconsequential.

Multiple states have become alarmed by the nonexistence of investigative bodies in response to growing concerns about prosecutorial discretion. To remedy this issue, one state, New York, recently created a Commission on Prosecutorial Conduct—the first and only commission crafted to review claims of misconduct by prosecutors. Although Arkansas currently has a

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157. See ARK. R. CRIM. P. 37.4.


159. See generally ARK. R. CRIM. P. 37.1 (listing the grounds on which a defendant may appeal a sentence).


161. See, e.g., Joaquin Sapien et al., Who Polices Prosecutors Who Abuse Their Authority? Usually Nobody, PROPUBLICA (Apr. 3, 2013), [https://perma.cc/NCX3-GTP7].

* At the time of writing this Comment, the afore cited New York statutes authorizing the Commission’s oversight of New York prosecutors were unchallenged. However, on January 28, 2020, the Supreme Court of Albany County, New York held these statutes to be unconstitutional, opining that the statutes impermissibly allocated jurisdiction from the Supreme Court Appellate Division, asked justices to render advisory opinions, and impinged on the governor’s constitutional jurisdiction to remove elected officials. To constitutionally
committee that oversees judicial conduct, the state lacks any oversight of prosecutorial decisions. To combat disparate criminal sentences and discretionary abuses, the Arkansas legislature should create a similar commission to supervise prosecutorial discretion. The review panel would serve as a neutral, third-party commission to hear and investigate grievances about prosecutorial misconduct. The commission would provide criminal defendants with a broader outlet to address sentencing disparities while avoiding the risks and costs of appeal and would promote the Arkansas Sentencing Standards Grid’s intended purpose—equitable sentencing statewide. Accordingly, Arkansas should adopt a state-specific version of the New York Commission on Prosecutorial Conduct (the Commission), which follows in detail.

Eleven members make up the Commission: one “full time law professor or dean at an accredited law school with significant criminal law experience”; two retired judges—one with “significant work experience providing public defense services and one [with] significant prosecutorial experience”; four attorneys that have provided “public defense services” for five or more years; and four “active, former[,] or retired prosecutors with at least five years of prosecutorial experience.” Aside from initial

operate in Arkansas, the Commission should be created and governed by the Arkansas Supreme Court in adherence with Arkansas’s constitution.


163. See JUDICIAL DISCIPLINE & DISABILITY COMM’N., [https://perma.cc/C4P6-JQ6Q] (last visited Mar. 25, 2019) (“The Commission investigates and may take disciplinary action or, in the most serious cases, recommend to the Arkansas Supreme Court that it impose discipline upon a judge whose actions are found to be a violation of the Code of Judicial Conduct.”).

164. N.Y. JUD. LAW § 499-c(1)(b) (McKinney 2019). The chief judge of the New York Court of Appeals appoints the law professor or dean and the retired judges. Id. A “retired judge” means “a former judge or justice of the unified court system who was qualified as an attorney during such service and served as such a judge or justice for at least five years.” N.Y. JUD. LAW § 499-b(6) (McKinney 2019).

165. N.Y. JUD. LAW § 499-c(1)(a). The governor of New York appoints two prosecutors and two public defenders to the Commission. Id. New York legislative leaders appoint the remaining two prosecutors and two public defenders. Id. at (1)(c). Specifically, the temporary president of the senate, the minority leader of the senate, the speaker of the assembly, and the minority leader of the assembly each recommend one member. Id.
appointments, each Commission member is appointed for a four-year term.\textsuperscript{166} Once nominated, the Commission members choose one member to serve as the Commission Chairperson.\textsuperscript{167}

Upon the filing of a complaint, the Commission has the authority to review prosecutorial conduct to determine whether the conduct as alleged violates applicable rules and/or law.\textsuperscript{168} Departure as to any applicable statute, case law, or New York Rule of Professional Conduct\textsuperscript{169} sufficiently forms the basis for a complaint.\textsuperscript{170} The Commission can then initiate, investigate, and hear complaints regarding the conduct, qualifications, fitness to perform, or performance of official duties of any prosecutor.\textsuperscript{171} Complaints must be in writing and signed by the complainant.\textsuperscript{172} Once the Commission receives the complaint, they: (1) investigate the complaint; or (2) dismiss the complaint if it lacks merit.\textsuperscript{173} If the Commission dismisses the complaint, it then notifies the complainant and, if initially notified about the

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\item \textsuperscript{166} N.Y. JUD. LAW § 499-c(1)(c)(3). Commission membership does not constitute the holding of public office and an oath of office is not required for admission. \textit{Id.} at (1)(c)(2). Further, members do not receive any form of compensation for serving on the Commission. \textit{Id.} at (1)(c)(5). However, each member is entitled to reimbursement of any “actual and necessary expenses incurred in the discharge of his or her duties” to the Commission. \textit{Id.} The Commission’s business persists even when, “pending new appointments[,]” a “temporary imbalance in the number of prosecutors and defense attorneys” occurs. \textit{Id.} at (1)(c). Notably, membership ceases “if a member attains a position which would have rendered him or her ineligible for appointment at the time of his or her appointment.” \textit{Id.} at (1)(c)(3). Additionally, the original appointing authority may replace any member for the remainder of their term if they fail to participate for ninety days. N.Y. JUD. LAW § 499-c(1)(c)(2).
\item \textsuperscript{167} N.Y. JUD. LAW § 499-c(1)(c)(2). The Chairperson serves for the shorter of: (1) their remaining term of office; or (2) two years. \textit{Id.} See also discussion supra Part III (Chairperson’s functions).
\item \textsuperscript{168} N.Y. JUD. LAW § 499-a (McKinney 2019).
\item \textsuperscript{169} Including particular emphasis on the special responsibilities of a prosecutor. In Arkansas’s case, see Ark. R. Prof’l Conduct 3.8.
\item \textsuperscript{170} N.Y. JUD. LAW § 499-f(1) (McKinney 2019).
\item \textsuperscript{171} N.Y. JUD. LAW § 499-f(1). “‘Prosecutor’ means a district attorney or any assistant district attorney of any [New York] county . . . in an action to exact any criminal penalty, fine, sanction, or forfeiture.” N.Y. JUD. LAW § 499-b(2) (McKinney 2019).
\item \textsuperscript{172} N.Y. JUD. LAW § 499-f(1). In some circumstances, the Commission requires a verified complaint. \textit{Id.}
\item \textsuperscript{173} N.Y. JUD. LAW § 499-f(1). For any action requiring a Commission decision eight members “constitute a quorum . . . and the concurrence of six members . . . [is] necessary.” N.Y. JUD. LAW § 499-c(1)(c)(6) (McKinney 2019).
\end{itemize}
The Commission can also initiate an investigation of a prosecutor on its own accord.\textsuperscript{175} If a prosecutor is a Commission member and is the subject of a complaint or investigation, they are “disqualified from participating in any [of the] proceedings with respect thereto.”\textsuperscript{176} Additionally, if any Commission member is employed in the same organization as the subject, they too are disqualified from participating in the subsequent proceedings.\textsuperscript{177} During an active criminal investigation, the prosecuting agency may inform the Commission “of its position that the Commission’s investigations will substantially interfere with the agency’s own criminal investigation.”\textsuperscript{178} If the prosecuting agency articulates its basis with specificity and particularity, then the Commission only exercises its powers in a manner that does not interfere with the ongoing investigation or prosecution.\textsuperscript{179}

If the Commission requires the prosecutor’s appearance during an investigation, the Commission notifies\textsuperscript{180} the prosecutor, in writing, of their request and attaches a copy of the complaint.\textsuperscript{181} If, during investigation, the Commission determines that a hearing\textsuperscript{182} is warranted, they must draft and serve a formal written complaint, signed and verified by the Administrator, on the

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\textsuperscript{174} N.Y. Jud. Law § 499-f(1).
\textsuperscript{175} N.Y. Jud. Law § 499-f(2). In such event, the Commission files a written complaint, signed by the Administrator, to serve as the basis for the investigation. \textit{Id. See supra} notes 230-32 and accompanying text (Administrators).
\textsuperscript{176} N.Y. Jud. Law § 499-c(1)(c)(4). An individual is considered a subject if the complaint or investigation concerns the individual’s “qualifications, conduct, fitness to perform, or performance of his or her official duties.” \textit{Id.}
\textsuperscript{177} N.Y. Jud. Law § 499-c(1)(c)(4).
\textsuperscript{178} N.Y. Jud. Law § 499-d(1) (McKinney 2019). The Commission prescribes the form and manner in which a prosecuting agency informs it of such position. \textit{Id.}
\textsuperscript{179} N.Y. Jud. Law § 499-d(1). Additionally, the Commission refrains from exercising its powers before the earlier of: (1) “the filing of an accusatory instrument” regarding the crimes leading to the investigation and underlying the complaint; or (2) “one year from the commencement of the occurrence of” the crimes leading to the investigation and underlying the complaint. \textit{Id.}
\textsuperscript{180} N.Y. Jud. Law § 499-f(3). The Commission gives notice either: (1) “personally, at least three days prior to such appearance”; or (2) “by certified mail, return receipt requested, at least five days prior to such appearance.” \textit{Id.}
\textsuperscript{181} N.Y. Jud. Law § 499-f(4).
\textsuperscript{182} A “hearing” is any proceeding which addresses complaints, investigations, hearings, and dispositions, in accordance with the Commission’s rules and provisions. N.Y. Jud. Law § 499-f(4).
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prosecutor.\textsuperscript{183} Thereafter, the prosecutor “file[s] a written answer . . . with the [C]ommission within twenty days.”\textsuperscript{184} Next, if the Commission determines that a hearing is still warranted, it notifies the prosecutor in writing “either personally, at least twenty days [before the hearing], or by certified mail, return receipt requested, at least twenty-two days prior.”\textsuperscript{185} The Commission additionally notifies complainants of hearings.\textsuperscript{186} However, unless the prosecutor subpoenas the complainant as a witness, their attendance is within the Commission’s discretion.\textsuperscript{187} Additionally, hearings are not public unless the prosecutor demands a public hearing in writing.\textsuperscript{188}

During the hearing, the Commission may take witness testimony and receive evidence and material relevant to the complaint.\textsuperscript{189} The prosecutor has a right to representation by counsel during the hearing, to call and cross-examine witnesses, and to present evidence and other relevant material.\textsuperscript{180} The Commission takes a transcript of the entire hearing for their records.\textsuperscript{191} “Subject to the [Commission’s approval], the [A]dministrator and the prosecutor may agree on a statement of facts and may stipulate in

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  \item \textsuperscript{183} N.Y. JUD. LAW § 499-f(4). The complaint must also be accompanied with notice. \textit{Id.} \textsuperscript{184} N.Y. JUD. LAW § 499-f(4). \textsuperscript{185} N.Y. JUD. LAW § 499-f(4). The prosecutor may make a written request for “all documents which the [C]ommission intends to present at such hearing and any written statements made by witnesses who will be called to give testimony by the [C]ommission.” \textit{Id.} In such event, the Commission must, at no cost to the prosecutor, provide copies of the requested documents and statements five days before the hearing. \textit{Id.} Absent a written request, the Commission must still make any relevant exculpatory evidence and material available to the prosecutor five days prior to the hearing. \textit{Id.} However, the Commission’s failure “to timely furnish any documents, statements[,] and/or exculpatory eviden[ce] . . . [does] not affect the validity of any proceedings provided that such failure is . . . substantially prejudicial to the prosecutor.” \textit{Id.} \textsuperscript{186} N.Y. JUD. LAW § 499-f(4). \textsuperscript{187} N.Y. JUD. LAW § 499-f(4). \textsuperscript{188} N.Y. JUD. LAW § 499-f(4). \textsuperscript{189} N.Y. JUD. LAW § 499-f(4). \textsuperscript{190} N.Y. JUD. LAW § 499-f(4). Notably, prosecutors have a right to representation by counsel during all investigation stages where the Commission requires the prosecutor’s appearance to present relevant evidence and material for the complaint. \textit{Id.} \textsuperscript{191} N.Y. JUD. LAW § 499-f(4). The Commission creates a transcript for all proceedings where testimony or statements under oath are taken. \textit{Id.} The Commission makes available to the prosecutor a transcript of their testimony without cost. \textit{Id.} The Commission keeps transcripts confidential, except as otherwise permitted. \textit{Id.} \end{itemize}
writing” a waiver of the hearing.\textsuperscript{192} Upon such waiver, the Commission uses the “pleadings and agreed statement of facts” to make a finding.\textsuperscript{193}

Following the hearing, the Commission may find it necessary to “admonish or censure” a prosecutor or to recommend removal\textsuperscript{194} of the prosecutor “from office for cause” to the governor.\textsuperscript{195} A prosecutor can either accept the Commission’s determination or request review by the presiding justices of the appellate division.\textsuperscript{196} However, if the prosecutor accepts the Commission’s punishment, then the Commission carries out the punishment according to its findings.\textsuperscript{197} Alternatively, a

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\item N.Y. JUD. LAW § 499-f(5).
\item N.Y. JUD. LAW § 499-f(5).
\item N.Y. JUD. LAW § 499-f(7). Removal or retirement of a prosecutor is considered a removal from public office pursuant to section thirty of the New York Public Officers Law. See N.Y. PUB. OFF. LAW § 30 (McKinney 2018). If a prosecutor resigns pursuant to any recommendation of removal, or pending a determination of removal, jurisdiction remains unaffected. N.Y. JUD. LAW § 499-i (McKinney 2019). Thus, the Commission and the presiding justices of the appellate division have continuing jurisdiction over the matter. \textit{Id. See supra} note 198 (defining “presiding justices of the appellate division”).
\item N.Y. JUD. LAW § 499-f(1). For cause includes, but is not limited to, “misconduct in office, as evidenced by [a prosecutor’s] departure from his or her obligations under appropriate statute, case law, and/or New York Rules of Professional Conduct.” \textit{Id.} Additionally, for cause includes “persistent failure to perform his or her duties, conduct prejudicial to the administration of justice,” or necessary retirement due to “mental or physical disability preventing the proper performance of his or her prosecutorial duties.” \textit{Id.} If, following a hearing, the Commission makes such determination, then the Commission sends it to the presiding justices of the appellate division. \textit{Id. See supra} note 198 (defining “presiding justices of the appellate division”). The written determination also includes the Commission’s findings of fact and conclusions of law and the record of the proceedings that the determination is based on. N.Y. JUD. LAW § 499-f(1). The presiding justices of the appellate division then propound a copy of the same to the prosecutor involved, either personally or by mail. \textit{Id.} Once service is complete, the Commission’s determination, its findings and conclusions, and the “record of its proceedings [are] made available” to the public at the Commission’s “principal office . . . and at the office of the clerk of the appellate division in the department in which the alleged misconduct occurred.” \textit{Id.} However, the Commission does not disclose records provided by a prosecuting agency to the Commission. \textit{Id. See also} N.Y. PUB. OFF. LAW art. VI, §§ 84-90.
\item N.Y. JUD. LAW § 499-f(7). The prosecutor must make the request for review in writing within thirty days of receipt of the determination. \textit{Id.} “Presiding justices of the appellate division” means “collectively, the presiding justices of the appellate division of the supreme court of each judicial department.” N.Y. JUD. LAW § 499-b(5) (McKinney 2019) (internal quotation marks omitted). The chief administrative judge establishes filing and communication procedures for those interacting with the presiding justice of the appellate division pursuant to this Commission. N.Y. JUD. LAW § 499-d(5) (McKinney 2019).
\item N.Y. JUD. LAW § 499-f(7). If the prosecutor accepts the Commission’s determination of removal or retirement, then the presiding justices of the appellate division transmit
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prosecutor may request a review of the determination.\textsuperscript{198} In that case, the presiding justices of the appellate division review the Commission’s findings of fact and conclusions of law based on the proceedings’ record.\textsuperscript{199} After review, the presiding justices of the appellate division: (1) accept or reject the determined sanction; (2) impose a different sanction, including admonition or censure, or recommended removal or retirement; or (3) impose no sanction.\textsuperscript{200} The presiding justices of the appellate division also have the power to suspend a prosecutor pending the Commission’s determination of retirement or removal.\textsuperscript{201} Further, both the presiding justices of the appellate division and the Commission can suspend a prosecutor charged with a felony.\textsuperscript{202} The Commission may—at any time—determine that no further action is necessary after service of a formal complaint, during a hearing, or following a hearing.\textsuperscript{203} In such event, the Commission dismisses the complaint and notifies both the complainant and prosecutor in writing.\textsuperscript{204} 

The Commission protects certain records as confidential: “complaints, correspondence, . . . proceedings[, transcripts[, and] other papers[, data[,] and records.”\textsuperscript{205} Information is only

\textsuperscript{198} N.Y. JUD. LAW § 499-f(7).
\textsuperscript{199} N.Y. JUD. LAW § 499-f(8).
\textsuperscript{200} N.Y. JUD. LAW § 499-f(8). The presiding justices of the appellate division may only recommend removal or retirement based on the previously listed for-cause reasons. See infra note 196 (for cause). If the presiding justices recommend removal or retirement, they and the Commission shall transmit the entire record to the governor. N.Y. JUD. LAW § 499-f(8). The governor again independently determines whether retirement or removal of the prosecutor is appropriate. Id.
\textsuperscript{201} N.Y. JUD. LAW § 499-f. Suspension terminates upon conviction also resulting in the prosecutor’s disbarment. Id. If the conviction becomes final, the prosecutor is removed from office. Id. Suspension also terminates upon reversal of the conviction and dismissal of the accusatory instrument. Id. Unless the presiding justices of the appellate division direct otherwise, a prosecutor suspended from office by the court receives their salary during the suspension period. Id.
\textsuperscript{202} N.Y. JUD. LAW § 499-f(9)(a). The Commission additionally has authority to suspend prosecutors charged with any crime involving moral turpitude. Id.
\textsuperscript{203} N.Y. JUD. LAW § 499-f(6).
\textsuperscript{204} N.Y. JUD. LAW § 499-f(6).
\textsuperscript{205} N.Y. JUD. LAW § 499-g (McKinney 2019).
released following a determination by the Commission or following a written request from the subject prosecutor. The Commission may reprimand, fine, suspend, or remove “[a]ny staff member, employee[,] or agent” that breaches confidentiality. Within ten days of acquiring knowledge of the breach, the Chairperson files written charges against the breaching individual. Within five days of filing the written charges, all members of the Commission must vote whether probable cause for the charges exists. If probable cause exists, the Commission, within five days of the vote, sends the accused a written statement specifying the charges in detail and outlining the accused’s rights. Within ten days of receipt, the accused can: (1) request a hearing on the charges; or (2) waive the hearing.

The Commission has the authority to establish rules and procedures for hearings. However, the rules need not comply with the technical rules of the New York Rules of Evidence or the Federal Rules of Evidence. Prior to the hearing, the Commission selects a panel to oversee the proceeding. The panel chooses

206. N.Y. JUD. LAW § 499-f(7).
207. N.Y. JUD. LAW § 499-f(4). The prosecutor may request for the Commission to make the records public or be made available to any person, agency, or individual designated by the prosecutor. Id.
208. N.Y. JUD. LAW § 499-h(1) (McKinney 2019).
209. N.Y. JUD. LAW § 499-h(2). The Commission can suspend the accused’s pay pending final determination of the charges. Id.
210. N.Y. JUD. LAW § 499-h(2).
211. N.Y. JUD. LAW § 499-h(2). If the accused requests a hearing the Commission schedules such hearing at its offices within twenty days and immediately notifies the accused of the place and time in writing. Id. at (3). During the proceedings, the accused has the opportunity to defend themselves and testify on their own behalf. Id. They also have the right to representation “by counsel, to subpoena witnesses[,] and to cross-examine witnesses.” Id. at (4). All testimony at the proceeding is taken under oath and a record of the proceedings kept. Id. Upon written request, the accused may obtain a copy of the record at no charge. N.Y. JUD. LAW § 499-h(4).
212. N.Y. JUD. LAW § 499-h(2). If the accused fails to notify the Commission within ten days, they waive their rights to a hearing. Id. If waiver occurs, the Commission decides within ten days by a majority vote what the accused’s charges will be and the penalty or punishment for such charges. Id.
213. N.Y. JUD. LAW § 499-h(4).
214. N.Y. JUD. LAW § 499-h(4).
215. N.Y. JUD. LAW § 499-h(4).
216. N.Y. JUD. LAW § 499-h(4). Panels are comprised of three Commission members, one of which must be a member of the bar. N.Y. JUD. LAW § 499-e(1) (McKinney 2019). “‘Member of the bar’ means a person admitted to the practice of law in [New York] for at least five years.” N.Y. JUD. LAW § 499-b(4) (McKinney 2019). “The Commission may
one person to act as the Chairperson, who conducts the hearing.\textsuperscript{217} Within five days of the hearing’s conclusion, the panel sends a report of the hearing to the Commission and the accused.\textsuperscript{218} The report details the panel’s findings, recommendations, and penalty or punishment, if warranted.\textsuperscript{219} The Commission then determines whether to implement the panel’s recommendation.\textsuperscript{220} However, if the Commission dismisses the charges, then it restores the accused to their position with full pay and expunges the charges from their record.\textsuperscript{221}

The Commission also has an array of powers and duties necessary to carry out its functions. First, the Commission is empowered to: “conduct hearings and investigations[,] administer oaths or affirmations[,] subpoena witnesses[,] compel witness attendance[,] examine witnesses under oath or affirmation[,] and require the production of any books, records, documents[,] or other evidence that it may deem relevant or material to an investigation.”\textsuperscript{222} Additionally, the Commission has both the power and duty “[t]o adopt, promulgate, amend and rescind rules and procedures” incumbent on executing the Commission’s

delegate any of its functions, powers[,] and duties to a [P]anel” except in the case of “confer immunity in accordance with section 50.20 of the [New York] criminal procedure law.” N.Y. JUD. LAW § 499-e(1); see also N.Y. CRIM. PROC. LAW § 50.20. Additionally, Panels cannot take any action with respect to Referees. N.Y. JUD. LAW § 499-e(1). In the event of three-member Panels, two members constitute a quorum, and the concurrence of two Panel members is necessary for any action taken. N.Y. JUD. LAW § 499-c(6) (McKinney 2019).

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\item \textsuperscript{217} N.Y. JUD. LAW § 499-h(4).
\item \textsuperscript{218} N.Y. JUD. LAW § 499-h(5).
\item \textsuperscript{219} N.Y. JUD. LAW § 499-h(5).
\item \textsuperscript{220} N.Y. JUD. LAW § 499-h(5). The Commission determines whether it will accept the recommendation within ten days of receipt and implements such recommendation within five days of that determination. \textit{Id.}
\item \textsuperscript{221} N.Y. JUD. LAW § 499-h(5). Full pay also includes any period of suspension without pay. \textit{Id.}
\item \textsuperscript{222} N.Y. JUD. LAW § 499-d(1) (McKinney 2019). The Commission can appoint any Commission or staff member to exercise any of the enumerated powers, excluding, however, the ability “to subpoena witnesses or require the production of books, records, documents[,] or other evidence” which is reserved solely for a member of the Commission or the Administrator. \textit{Id.} The Commission is also empowered to bestow immunity when, in the Commission’s opinion, such is “necessary and proper in accordance with section 50.20 of [New York’s] criminal procedure law.” \textit{Id.} at (2); see also N.Y. CRIM. PROC. LAW § 50.20 (McKinney 2019). However, the Commission must give the attorney general and the appropriate district attorney at least forty-eight hour written notice that it intends to confer such immunity. N.Y. JUD. LAW § 499-d(2).
\end{itemize}
objectives and all subparts of the New York Commission on Prosecutorial Conduct.\textsuperscript{223} Third, the Commission has the power to demand any “assistance, information[,] and data” that facilitates execution of “its functions, powers[,] and duties.”\textsuperscript{224} The Commission may make these requests from “any court, department, division, board, bureau, commission, or other agency of [New York] or political subdivision thereof or any public authority.”\textsuperscript{225}

The Commission has the duty to conform to annual reporting requirements.\textsuperscript{226} The Commission sends the required information to the governor, the legislature, and the chief judge of the New York Court of Appeals and reports the proceedings upon which they have made a final determination.\textsuperscript{227} The Commission can also make certain appointments to carry out its functions and duties.\textsuperscript{228} Specifically, the Commission may appoint or remove an Administrator at their discretion.\textsuperscript{229} The Administrator appoints any such “deputies, assistants, counsel, investigators[,] and other officers and employees” that they deem necessary.\textsuperscript{230} Further, the Administrator prescribes their powers and duties, fixes their compensation, and reimburses their expenses within the appropriated amounts.\textsuperscript{231} Second, the Commission may designate a Referee to hear and report to them.\textsuperscript{232} In that instance, a Referee is authorized to: “conduct hearings[,] administer oaths or affirmations[,] subpoena witnesses[,] compel [witness] attendance[,] examine [witnesses] under oath or affirmation[,] and require the

\textsuperscript{223} N.Y. Jud. Law § 499-d(5). The Commission cannot make changes inconsistent with the law. Id. The Commission files any such rule or procedure in the offices of the chief administrator of the courts and the secretary of state. Id.

\textsuperscript{224} N.Y. Jud. Law § 499-d(3).

\textsuperscript{225} N.Y. Jud. Law § 499-d(3).

\textsuperscript{226} N.Y. Jud. Law § 499-d(4). The Commission may require additional reporting as deemed necessary. Id.

\textsuperscript{227} N.Y. Jud. Law § 499-d(4). The contents can make “legislative and administrative recommendations” however, any report—including the annual report—and the contents included therein must satisfy the Commission’s confidentiality provisions. Id.

\textsuperscript{228} N.Y. Jud. Law § 499-c(7) (McKinney 2019).

\textsuperscript{229} N.Y. Jud. Law § 499-c(7). The Administrator must be a “Member of the bar” that does not hold and has never held a prosecutorial position prosecutor. Id. See also supra note 217 (defining “Member of the bar”).

\textsuperscript{230} N.Y. Jud. Law § 499-c(7).

\textsuperscript{231} N.Y. Jud. Law § 499-c(7).

\textsuperscript{232} Referees may be any member of the bar that is not a prosecutor or member of the Commission or its staff. N.Y. Jud. Law § 499-c(2). A Referee carries out their duties in accordance with the rules and provisions set forth by the Commission. Id.
production of any books, records, documents[,] or other evidence that the [R]eferee . . . deem[s] relevant or material to the subject of the hearing.”

233 Notably, none of the powers, duties, and function of the Commission supersede those of the governor.

IV. CONCLUSION

State-wide uniform sentencing guidelines fall short of their proclaimed purpose: uniform sentencing. Disparate sentencing remains an issue for many criminal defendants in Arkansas. In a study of Washington and Sebastian county, sentencing orders have shown that non-violent drug offenders receive a harsher punishment depending on offender location alone. Despite the implementation of numerous safeguards, however, prosecutorial discretion has remained intact. Given that prosecutors occupy one of the most critical roles in our justice system, it is counterintuitive to allow such power to go unchecked. Because defendants are relegated to limited options for appealing their sentence or bringing prosecutorial grievances to light, Arkansas should implement a commission to review prosecutorial conduct similar to the New York Commission. The Arkansas commission would provide a formal outlet and procedure for complainants to have their grievances fairly addressed by a neutral third-party. Not only would an Arkansas commission redress the wrongs committed at the prosecutor level, but it would also deter future prosecutorial misconduct. While there is no one-size-fits-all solution to disparate sentencing, a state commission to review prosecutorial conduct would tip the scales closer to uniformity and justice for all.

233. N.Y. JUD. LAW § 499-e(2).
234. N.Y. JUD. LAW § 499-j(1).
235. ARK. CODE ANN. § 16-90-801(b) (2019).
### Revised Arkansas Sentencing Standards Grid

**Effective Date: For Offenses committed January 1, 2018 and Thenceforth**

<table>
<thead>
<tr>
<th>Offense Seriousness</th>
<th>0</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5+</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>ADC 300-480 (25-40 yrs)</td>
<td>ADC 360-480 (30-40 yrs)</td>
<td>ADC 420-540 (35-45 yrs)</td>
<td>ADC 480-600 (40-50 yrs)</td>
<td>ADC 480-720 (45-60 yrs)</td>
<td>ADC 480-840 (45-70 yrs)</td>
</tr>
<tr>
<td>9th</td>
<td>ADC 180-300 (15-25 yrs)</td>
<td>ADC 240-360 (20-30 yrs)</td>
<td>ADC 264-420 (23-35 yrs)</td>
<td>ADC 336-540 (28-45 yrs)</td>
<td>ADC 420-600 (33-50 yrs)</td>
<td>ADC 480-720 (35-60 yrs)</td>
</tr>
<tr>
<td>8th</td>
<td>ADC 96-180 (8-15 yrs)</td>
<td>ADC 120-240 (10-20 yrs)</td>
<td>ADC 120-300 (10-25 yrs)</td>
<td>ADC 180-360 (15-30 yrs)</td>
<td>ADC 180-420 (15-35 yrs)</td>
<td>ADC 240-600 (15-50 yrs)</td>
</tr>
<tr>
<td>7th</td>
<td>ADC 60-120 (5-10 yrs)</td>
<td>ADC 72-144 (6-12 yrs)</td>
<td>ADC 84-180 (7-15 yrs)</td>
<td>ADC 96-240 (8-20 yrs)</td>
<td>ADC 120-300 (10-25 yrs)</td>
<td>ADC 130-480 (10-40 yrs)</td>
</tr>
<tr>
<td>6th</td>
<td>ADC 24-60 (2-5 yrs)</td>
<td>ADC 36-84 (3-7 yrs)</td>
<td>ADC 48-96 (4-8 yrs)</td>
<td>ADC 60-120 (5-10 yrs)</td>
<td>ADC 84-180 (7-15 yrs)</td>
<td>ADC 120-240 (10-20 yrs)</td>
</tr>
<tr>
<td>5th</td>
<td>CCC AS</td>
<td>ADC 24-60 (2-5 yrs)</td>
<td>ADC 36-72 (3-6 yrs)</td>
<td>ADC 48-96 (4-8 yrs)</td>
<td>ADC 60-144 (5-12 yrs)</td>
<td>ADC 84-180 (7-15 yrs)</td>
</tr>
<tr>
<td>4th</td>
<td>CCC AS</td>
<td>ADC 18-36 (1-5 yrs)</td>
<td>ADC 24-60 (2-5 yrs)</td>
<td>ADC 36-72 (3-6 yrs)</td>
<td>ADC 48-96 (4-8 yrs)</td>
<td>ADC 60-120 (5-10 yrs)</td>
</tr>
<tr>
<td>3rd</td>
<td>CCC AS</td>
<td>CCC AS</td>
<td>ADC 18-36 (1-5 yrs)</td>
<td>ADC 24-48 (2-4 yrs)</td>
<td>ADC 36-60 (3-5 yrs)</td>
<td>ADC 48-72 (4-6 yrs)</td>
</tr>
<tr>
<td>2nd</td>
<td>CCC AS</td>
<td>CCC AS</td>
<td>CCC AS</td>
<td>ADC 12-24 (1-2 yrs)</td>
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<td>CCC AS</td>
</tr>
<tr>
<td>1st</td>
<td>AS AS AS</td>
<td>AS</td>
<td>CCC AS</td>
<td>ADC 12-24 (1-2 yrs)</td>
<td>CCC AS</td>
<td>CCC AS</td>
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</tbody>
</table>

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**Sentence Durations Are Shown in Months Committed to the Arkansas Department of Correction** (Followed by a conversion to years for convenience).

ADC = Penitentiary Only, CCC = Community Correction Center (See Community Correction Center Policy Statement), AS = Alternative Sanctions

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## APPENDIX B

### Original Arkansas Sentencing Standards Grid

*Effective Date - For Offenses Committed January 1, 1994 and Thereafter*

<table>
<thead>
<tr>
<th>Offense Seriousness</th>
<th>0</th>
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<th>2</th>
<th>3</th>
<th>4</th>
<th>5+</th>
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<td>10s</td>
<td>ADC 360</td>
<td>ADC 384</td>
<td>ADC 432</td>
<td>ADC 528</td>
<td>ADC 660</td>
<td>ADC 780</td>
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<tr>
<td>9s</td>
<td>ADC 240</td>
<td>ADC 312</td>
<td>ADC 396</td>
<td>ADC 480</td>
<td>ADC 600</td>
<td>ADC 720</td>
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<tr>
<td>8s,1</td>
<td>ADC 120</td>
<td>ADC 168</td>
<td>ADC 264</td>
<td>ADC 360</td>
<td>ADC 432</td>
<td>ADC 600</td>
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<tr>
<td>7s</td>
<td>ADC 42 CCC AS, ADC 54 CCC AS, ADC 84 CCC AS</td>
<td>ADC 120</td>
<td>ADC 160</td>
<td>ADC 300</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6s</td>
<td>ADC 24 CCC AS, ADC 36 CCC AS, ADC 66 CCC AS, ADC 108 CCC AS</td>
<td>ADC 156</td>
<td>ADC 240</td>
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<td></td>
</tr>
<tr>
<td>5</td>
<td>CCC AS, ADC 36 CCC AS, ADC 54 CCC AS, ADC 72 CCC AS</td>
<td>ADC 120</td>
<td>ADC 180</td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>4</td>
<td>CCC AS, ADC 18 CCC AS, ADC 30 CCC AS, ADC 54 CCC AS, ADC 72 CCC AS</td>
<td>ADC 96</td>
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</tr>
<tr>
<td>3</td>
<td>CCC AS, ADC 18 CCC AS, ADC 30 CCC AS, ADC 42 CCC AS, ADC 60 CCC AS</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>2</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td>1</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**ALL SENTENCE DURATIONS ARE SHOWN IN MONTHS COMMITTED TO THE ARKANSAS DEPARTMENT OF CORRECTION.**

ADC = Penitentiary Only, CCC = Community Corrections Center (See Community Corrections Center Policy Statement),

--- = Transfer Eligibility Line - Eligibility on sentences above the line is 1/2 of the sentence minus good time. Eligibility on sentences below the line is 1/3 of the sentence minus good time.

*Check applicability of Act 1326 of 1995 for release eligibility of crimes at these levels. See A.C.A. § 16-93-618, formerly codified at A.C.A. § 16-93-611.


## APPENDIX C

### SENTENCING ORDER

**IN THE CIRCUIT COURT OF __________ COUNTY, ARKANSAS.**

**JUDICIAL DISTRICT ______ DIVISION**

On the _____day of __________, 20________, Defendant __________ appeared before the Court, was advised of the nature of the charge(s), of Constitutional and legal rights, of the effect of a guilty plea upon these rights, and of the right to make a statement before sentencing.

<table>
<thead>
<tr>
<th>Defendant</th>
<th>DOB</th>
<th>Sex</th>
<th>Marital Status</th>
<th>Total Number of Counts</th>
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</thead>
<tbody>
<tr>
<td>Last, First, M</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Supervision Status at Time of Offense**

- **Probation:** __________
- **Parole:** __________
- **House Arrest:** __________
- **Electronic Monitoring:** __________

**Record Details**

<table>
<thead>
<tr>
<th>FBI#</th>
<th>Race &amp; Ethnicity</th>
<th>Sex</th>
<th>Age</th>
<th>Date of Birth</th>
<th>Misdemeanor</th>
<th>Felony</th>
</tr>
</thead>
</table>

- **Sentence to Be Imposed:** __________
- **Sentence Departure:** __________
- **Sentence Departure Reason:** __________

**Arkansas Law Review**

**Volume 73:1**

_204J_
## Defendant's Full Name

(please see complete list of departures criteria found at A.C.A. §416-90-904)

<table>
<thead>
<tr>
<th>Reasons for Departure</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aggravating</strong></td>
</tr>
<tr>
<td>1. Offender's conduct manifested deliberate cruelty to the victim during commission of current offense.</td>
</tr>
<tr>
<td>2. Offender knew victim vulnerable due to emotional, physical, or mental condition.</td>
</tr>
<tr>
<td>3. Offense was major economic offense established by one or more of the following criteria: (a) multiple victims/ victims, (b) monetary loss substantially greater than typical, (c) degree of sophistication or skill, (d) nature of fraudulent activity, or (e) other similar conduct.</td>
</tr>
<tr>
<td><strong>Mitigating</strong></td>
</tr>
<tr>
<td>1. Victim played an aggressive role or provoked the incident or was a willing participant.</td>
</tr>
<tr>
<td>2. Offender played a minor or passive role in commission of the offense.</td>
</tr>
<tr>
<td>3. Current Offense was major controlled substance offense if two or more of the following are present: (a) three or more separate transactions involve sale, transfer or possession with purpose; (b) amount substantially larger than the statutory minimum which defines the offense; (c) offense involved a high degree of planning or premeditation or a large geographic area; (d) offendor occupied a high position in the drug distribution hierarchy; (e) offender misused position of trust or status or fiduciary duty to facilitate commission; (f) Offender has received substantial income or resources from drug trafficking.</td>
</tr>
<tr>
<td>4. Current offense is a felony and the offender employed a firearm in furtherance of flight unless such use is element of offense.</td>
</tr>
<tr>
<td>5. Current offense was sexual offense and part of pattern with same or different victims under eighteen manifested by multiple incidents over a prolonged period of time.</td>
</tr>
<tr>
<td>6. Offense was committed in manner that exposed risk of injury to others.</td>
</tr>
<tr>
<td>7. Offense was a violent or sexual offense committed in victim's zone of privacy.</td>
</tr>
<tr>
<td>8. Offender attempted to cover or conceal the offense by intimidation or destruction or rendering ineffective, intractable, or intolerable.</td>
</tr>
<tr>
<td>9. Offender committed to avoid arrest or effecting an escape from custody.</td>
</tr>
<tr>
<td>10. Offender has minimum sentence in a violable homeland.</td>
</tr>
<tr>
<td>11. Statutory minimum sentence exceeded the presumptive sentence.</td>
</tr>
<tr>
<td>12. Multiple concurrent sentences being entered at this time require a higher sentence.</td>
</tr>
<tr>
<td>13. Sentence is higher as a result of other charges being dropped or merged.</td>
</tr>
<tr>
<td>14. Sentence is higher for a Community Correction Center.</td>
</tr>
<tr>
<td>15. Other.</td>
</tr>
</tbody>
</table>

**NOTE:**

* Defendant Sentence. “Imposed ADC” means incarceration in an Arkansas Department of Correction facility. “Imposed Judicial Transfer” means incarceration in a Department of Community Correction Center. “Imposed County Jail” means incarceration in a county jail facility. Indicate in months the total time the Defendant was sentenced to a term of incarceration. DO NOT INCLUDE TIME FOR SIS.

**Victim Info.** For more than one victim, please use the “Additional Victim Information” page to disclose additional victim demographics. If there is no victim, check not applicable.

* **A.C.A. § 8 of Offense/Name of Offense & Probation/SIS Revocation.** If an offender is being sentenced as a result of a revocation of probation or SIS, check the box indicating this is a “Probation/SIS Revocation” and enter the A.C.A. number and name of the offense for which the defendant was originally convicted. Do not enter the code provisions for revocation or the cause of the revocation.
Defendant's Full Name: ________________________________

A.C.A. § 9 of Offense

Name of Offense: ________________________________

A.C.A. § 9 of Original

Charged Offense: ________________________________

ATN: __________________

Offense was Dismissed [ ] Directed Acquittal [ ]

Agreed From District Court: ____________________

Yes: [ ] No: [ ]

Probation/SSI Revocation: ______________________

Case #: __________________

Offense Date: ____________________

Offense is Friday [ ] Monday [ ]

Offense Classification: [ ] A [ ] B [ ] C [ ] D [ ]

Number of Counts: 1

Criminal History Score: 1

Seriousness Level: 1

Defendant: Attempted [ ] Sought [ ]

Not Agreed to Commit the Offense [ ]

Presumptive Sentence: [ ] Prison Sentence of _______ to _______ months, [ ] Community Corrections Center, [ ] Alternative Sentence

Defendant Sentence (see Page 2)

Imposed 84 months, 10 years, transferred to 84 months, pursuant to 15714-93-301 et seq. or other §§.

Probation _______ months

Sentences pursuant to 15714-93-301 et seq. or other §§.

SSI _______ months

Sentences pursuant to 15714-93-301 et seq. or other §§.

Other 84 months

Defendant was convicted as a habitual offender, pursuant to A.C.A. §5-4-501, subsection .

Vic: _______ Yes [ ] No [ ]

Sentence is a Departure: [ ] Durational or [ ] Dispositional

Sentence Departures to Be Depicted (see page 2)

Judge's Own Sentence

Aggravating #: _______ or Mitigating #: _______

For App. #17 or No. #9, or if departing from guidelines, please explain:

Sentence Will Run: [ ] Concurrent [ ]

Concurrent [ ] to Sentence # __________________

Case #: __________________

A.C.A. § 9 of Offense

Name of Offense: ________________________________

A.C.A. § 9 of Original

Charged Offense: ________________________________

ATN: __________________

Offense was Dismissed [ ] Directed Acquittal [ ]

Agreed From District Court: ____________________

Yes: [ ] No: [ ]

Probation/SSI Revocation: ______________________

Case #: __________________

Offense Date: ____________________

Offense is Friday [ ] Monday [ ]

Offense Classification: [ ] A [ ] B [ ] C [ ] D [ ]

Number of Counts: 1

Criminal History Score: 1

Seriousness Level: 1

Defendant: Attempted [ ] Sought [ ]

Not Agreed to Commit the Offense [ ]

Presumptive Sentence: [ ] Prison Sentence of _______ to _______ months, [ ] Community Corrections Center, [ ] Alternative Sentence

Defendant Sentence (see Page 2)

Imposed 84 months, 10 years, transferred to 84 months, pursuant to 15714-93-301 et seq. or other §§.

Probation _______ months

Sentences pursuant to 15714-93-301 et seq. or other §§.

SSI _______ months

Sentences pursuant to 15714-93-301 et seq. or other §§.

Other 84 months

Defendant was convicted as a habitual offender, pursuant to A.C.A. §5-4-501, subsection .

Vic: _______ Yes [ ] No [ ]

Sentence is a Departure: [ ] Durational or [ ] Dispositional

Sentence Departures to Be Depicted (see page 2)

Judge's Own Sentence

Aggravating #: _______ or Mitigating #: _______

For App. #17 or No. #9, or if departing from guidelines, please explain:

Sentence Will Run: [ ] Concurrent [ ]

Concurrent [ ] to Sentence # __________________

Case #: __________________

A.C.A. § 9 of Offense

Name of Offense: ________________________________

A.C.A. § 9 of Original

Charged Offense: ________________________________

ATN: __________________

Offense was Dismissed [ ] Directed Acquittal [ ]

Agreed From District Court: ____________________

Yes: [ ] No: [ ]

Probation/SSI Revocation: ______________________

Case #: __________________

Offense Date: ____________________

Offense is Friday [ ] Monday [ ]

Offense Classification: [ ] A [ ] B [ ] C [ ] D [ ]

Number of Counts: 1

Criminal History Score: 1

Seriousness Level: 1

Defendant: Attempted [ ] Sought [ ]

Not Agreed to Commit the Offense [ ]

Presumptive Sentence: [ ] Prison Sentence of _______ to _______ months, [ ] Community Corrections Center, [ ] Alternative Sentence

Defendant Sentence (see Page 2)

Imposed 84 months, 10 years, transferred to 84 months, pursuant to 15714-93-301 et seq. or other §§.

Probation _______ months

Sentences pursuant to 15714-93-301 et seq. or other §§.

SSI _______ months

Sentences pursuant to 15714-93-301 et seq. or other §§.

Other 84 months

Defendant was convicted as a habitual offender, pursuant to A.C.A. §5-4-501, subsection .

Vic: _______ Yes [ ] No [ ]

Sentence is a Departure: [ ] Durational or [ ] Dispositional

Sentence Departures to Be Depicted (see page 2)

Judge's Own Sentence

Aggravating #: _______ or Mitigating #: _______

For App. #17 or No. #9, or if departing from guidelines, please explain:

Sentence Will Run: [ ] Concurrent [ ]

Concurrent [ ] to Sentence # __________________

Case #: __________________
**2020 SAME GRID, DIFFERENT RESULTS 204M**

### Defendant’s Full Name:

**Sex Offenses**
- Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form and pay the Mandatory Sex Offender Fee of $50.
- Defendant has committed an aggravated sex offense as defined in A.C.A. §12-12-903. Yes / No
- Defendant is alleged to be a sexually dangerous person and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. §12-12-918. Yes / No
- Defendant, who has been adjudicated guilty of an offense requiring registration, has been adjudicated guilty of a prior sex offense under a separate case number. Yes / No

### DNA Sample/Qualifying Offense
- Defendant has been adjudicated guilty of a qualifying offense or report offense (as defined in A.C.A. §12-12-1201). Yes / No
- Defendant is ordered to have a DNA sample drawn at a A.D.C. facility. Yes / No

### Fine, Fee, Restitution
- Court Costs $:
- Fines $:
- Restitution $: Payable to [if multiple beneficiaries, give names and payment priority]
- Booking/Admin Fee ($20) $:
- Drug Crime Assessment Fee ($125) $:
- DNA Sample Fee ($150) $:
- Children’s Advocacy Center Fund Fee $:
- Public Defender User Fee $:
- Public Defender Attorney Fee $:
- Other (explain) $:

### JAIL TIME
- TOTAL TIME TO BE SERVED FOR ALL OFFENSES in months: 0
- Life / LWOP
- 0
- Yes / No
- Death Penalty
- Yes / No
- $5
- Yes / No
- Sentence Options
- DEFENDANT IS ASSIGNED TO: ADC / ADC, Adult Transfer / A.A.C. / A.A.C. / A.A.C. / A.A.C.
- Conditions of disposition or probation are attached Yes / No
- A copy of the post-sentence investigation or sentencing information is attached Yes / No
- A copy of the Pretrial’s Report is attached Yes / No
- DEFENDANT WAS INFORMED OF APPELLATE RIGHTS Yes / No
- Appeal Bond $5
- $5
- Yes / No
- Prosecuting Attorney/Deputy (Print Name):
- Signature:
- Date:
- Circuit Judge (Print Name):
- Signature:
- Date:
- Additional Info:
Defendant's First Name:  

Additional Victim Information  

[CHECK ALL THAT APPLY]  

[DO NOT ENTER THE NAME OF ANY VICTIM]  

<table>
<thead>
<tr>
<th>Offense #</th>
<th>Victim #</th>
<th>Age</th>
<th>Sex</th>
<th>Race/Ethnicity</th>
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<td>Asian</td>
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