

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**

# **A Bill**

**ACT 548 OF 1993**  
**SENATE BILL 361**

4 **By: Senators Bookout, Canada, Miles, Walters, Cassady, Gordon, Fitch, Ross, Lewellen,**  
5 **Edwards, Everett, Keet, and Gwatney**

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## **For An Act To Be Entitled**

9 "THE COMMUNITY PUNISHMENT ACT."

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### **Subtitle**

12 "THE COMMUNITY PUNISHMENT ACT."

13

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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16 SECTION 1. Findings and Determinations. The State of Arkansas hereby  
17 finds that the cost of incarcerating the ever increasing numbers of offenders  
18 in traditional penitentiaries is skyrocketing, bringing added fiscal pressures  
19 on state government; and that some inmates can be effectively punished, with  
20 little risk to the public, in a more affordable manner through the use of  
21 community punishment programs and non-traditional facilities. As a result of  
22 the rising cost of traditional incarceration, the State finds that the purpose  
23 of corrections in Arkansas is twofold:

24 Institutions - defined as traditional prison beds are charged with the  
25 appropriate incapacitation of high risk offenders. Incapacitation involves  
26 traditional aspects of incarceration coupled with highly supervised community  
27 punishment when appropriate. High risk being defined as "...those convicted  
28 of the most serious offenses, those who have longer criminal histories, and  
29 those who have repeatedly failed to comply with conditions imposed under less  
30 restrictive sanctions".

31 Community punishment - defined as both non-traditional punishment  
32 centers and non-residential community punishments, including supervision on  
33 probation, parole, and transfer, are charged with the provision of punishment  
34 focused on promoting offender accountability and the supervision of offenders  
35 at appropriate levels to promote public safety. The community punishment  
36 target group shall consist of those offenders who are involved in less serious

1 criminal activity and/or are non-violent by nature and crime, even though the  
2 offender/offense may be repetitive, those who are technical violators of  
3 community supervision, and offenders returning to the community from  
4 incarceration who are in need of enhanced supervision options due to the  
5 nature of their criminal conviction.

6 Furthermore, the State determines that services designed to address  
7 offender needs must be integrated into the framework of both institutions and  
8 community punishment programs and must be balanced with supervision and  
9 punishment such that the community is repaid for the offense, public safety is  
10 promoted through supervision, and the offender is assisted in becoming a law  
11 abiding member of society.

12

13 SECTION 2. Authorization. The Board of Correction and Community  
14 Punishment shall implement a correctional plan, to be developed in conjunction  
15 with the Arkansas Sentencing Commission, which ensures the efficient use of  
16 prison beds, which are becoming scarce resources, through the development and  
17 expansion of community punishment options which will provide supervision,  
18 punishment, and services to a primary target group of non-violent offenders  
19 who would otherwise have been eligible for and likely to be sentenced to  
20 traditional incarceration.

21

22 SECTION 3. Definitions.

23 (1) "Board" means the Board of Correction and Community Punishment.

24 (2) "Community Punishment" means:

25 (A) Probation - a judicially imposed criminal sanction permitting  
26 varying levels of supervision of eligible offenders in the community;

27 (B) Economic Sanctions Programs - including an active organized  
28 collection of fees, fines, restitution, day fines, day reporting centers, and  
29 penalties attached for non-payment of fines;

30 (C) Home Detention Programs - ranging from curfew programs to  
31 house arrest with and without electronic monitoring;

32 (D) Community Service Programs - including both supervised and  
33 unsupervised work assignments and projects such that offenders provide  
34 substantial labor benefit to the community;

35 (E) Work Release Programs - including residential and non-

1 residential forms of labor, with salary, in the community;

2           (F) Restitution Programs - an organized collection and  
3 dissemination of restitution by a designated entity within the community  
4 punishment range of services, including when necessary the use of restitution  
5 centers, such that the offender is held accountable and the victim receives  
6 restitution ordered by the court in a timely fashion;

7           (G) Regional Punishment Facilities - multipurpose facilities  
8 encompassing security, punishment and services such that offenders can be  
9 housed therein when necessary but can also be assigned to or access punishment  
10 programs and services which are housed there, included therein are revocation  
11 centers, restitution centers, work release centers, community punishment  
12 centers;

13           (H) Boot Camps - highly regimented programs encompassing strict  
14 discipline, education, treatment and counseling designed to have the greatest  
15 positive impact on the offender in the shortest period of time;

16           (I) Drug/Alcohol Treatment Services - including both in-patient  
17 and out-patient drug/alcohol abuse treatment and counseling, provided by  
18 qualified community punishment service provider programs, for correctional  
19 clients;

20           (J) Educational Programs - including programs focused on the  
21 acquisition of basic learning skills, G.E.D. preparation, literacy training,  
22 and other applicable areas of education that are of value to correctional  
23 clients;

24           (K) Vocational Programs - focused on the learning of a marketable  
25 skill by correctional clients utilizing qualified vocational/technical  
26 community punishment service provider programs whenever possible;

27           (L) Job Skills Programs - focused on the acquisition of basic job  
28 skills, especially those related to how to get a job and how to keep a job;

29           (M) Mental Health Treatment Services - including both in-patient  
30 and out-patient mental health, family, and psychological counseling and  
31 treatment, provided by qualified community punishment service provider  
32 programs, for correctional clients;

33           (N) Parole - an administrative condition permitting state  
34 supervision of eligible offenders sentenced to state correctional facilities  
35 and released therefrom to community punishment programs or supervision.

1           (0) Post Prison Supervision - an administrative condition  
2 permitting state supervision of offenders sentenced to state correctional  
3 facilities and transferred therefrom to community punishment programs or  
4 community supervision.

5           (3) "Community Punishment Service Provider Program" means a public or  
6 private organization which provides treatment, guidance, training, support or  
7 other rehabilitative services to individual offenders, offender groups and  
8 their families in such areas as health, education, vocational training,  
9 special education, social services, psychological counseling, alcohol and drug  
10 treatment and other applicable correctional concerns.

11           (4) "Department of Community Punishment" means the administrative  
12 structure in place to oversee the development and operation of community  
13 punishment facilities, programs and services including probation and parole  
14 supervision.

15           (5) "Department of Correction" means the administrative structure in  
16 place to oversee the daily operation of secure prison facilities.

17           (6) "Eligibility or Eligible Offender" means any person convicted of a  
18 felony, who is by law eligible for such sentence, and who falls within the  
19 population targeted by the *Arkansas General Assembly* for inclusion in  
20 community *punishment facilities*.

21           (7) "Incarceration" means commitment to the Department of Correction.

22           (8) "Transfer" means an administrative condition permitting transfer of  
23 eligible offenders sentenced to state *traditional* correctional facilities to  
24 community punishment *facilities*, programming and community supervision.

25           (9) "Transfer Date" means the earliest date on which an offender is  
26 eligible for transfer from the Department of Correction to the Department of  
27 Community Punishment. Such date may be extended based on disciplinary  
28 behavior while under the custody of the Department of Correction.

29           (10) "Supervision" means direct supervision, at varying levels of  
30 intensity by either probation officers, in the case of sentences to probation  
31 with a condition of community punishment, or parole/post prison supervision  
32 officers, in the case of offenders eligible for release on parole or offenders  
33 transferred to community punishment or community supervision from the  
34 Department of Correction.

35           (11) "Suspended Imposition of Sentence" means a procedure whereby a

1 defendant who pleads or is found guilty of an offense is released by the court  
2 without pronouncement of sentence and without supervision.

3 (12) "Target Group" means a group of offenders/offenses, initially  
4 determined to be, but not limited to, theft, theft by receiving, hot checks,  
5 commercial burglary, failure to appear, fraudulent use of credit cards,  
6 criminal mischief, breaking and entering, drug paraphernalia and DWI 4,  
7 *meeting the eligibility criteria, determined by the Arkansas General Assembly,*  
8 to have significant impact on the use of correctional resources.

9 Offenders/offenses falling within the target group population may access  
10 community punishment facilities pursuant to Section 6 or 8 of this act.

11 Community Punishment Target Group Table in Code Section Numerical Order  
12 Code

13 Section	Name of crime
14 5 26 401	Nonsupport
15 5 36 103	Theft of property (Class B, C and D)
16 5 36 104	Theft of services (Class B and C)
17 5 36 105	Theft of property lost, mislaid, delivered by mistake
18 5 36 106	Theft by receiving (Class B and C)
19 5 36 115	Theft of leased or rented prop. (Class B and C)
20 5 37 201	Forgery (first and second degrees)
21 5 37 203	Defrauding secured creditors
22 5 37 204	Fraud in insolvency
23 5 37 207	Fraud use of a credit card
24 5 37 209	Possession of forgery device
25 5 37 210	Obtaining signature by deception
26 5 37 211	Defrauding judgment creditors
27 5 37 212	Using slugs of \$100 or more
28 5 37 213	Criminal simulation
29 5 37 302	Hot checks (Class B and C)
30 5 37 524	Fraud in acquisition of authority to provide motor vehicle 31 transportation of property
32 5 37 525	Defrauding a materialman of \$5000 or more
33 5 38 203	Criminal Mischief I
34 5 38 204	Criminal Mischief II
35 5 39 201	Commercial burglary

- 1 5 39 202 Breaking and entering
- 2 5 54 120 Failure to appear
- 3 5 56 102 Illegal use of food coupons
- 4 5 56 103 Illegal presentation of food coupons
- 5 5 64 403 Delivery, possession or manufacture of drug paraphernalia
- 6 5 65 103 DWI 4

7 (13) "Trial Court" means any court of this state having jurisdiction of  
8 an eligible offender and the power to sentence the eligible offender to the  
9 included options.

10

11 SECTION 4. Board of Correction and Community Punishment Powers and  
12 Duties. *Effective July 1, 1993, the Board of Correction and Community*  
13 *Punishment shall have the following duties and responsibilities with regard to*  
14 *community punishment programming:*

15 (1) Establish community punishment programs to which eligible offenders  
16 *may be assigned as a condition of probation, sentenced to by the trial court*  
17 *pursuant to this act, paroled to upon release from incarceration, or*  
18 *transferred to after incarceration in the Department of Correction.*

19 (2) Notify the trial courts of the state having criminal jurisdiction of  
20 the availability of certified and approved community punishment programs.

21 (3) Establish standards for the monitoring, auditing and certification  
22 of community punishment programs.

23 (4) Establish rules and regulations relating to the operation of  
24 community punishment programs and the supervision of eligible offenders  
25 participating therein.

26 (5) Promote cooperation among the courts, various law enforcement, and  
27 correctional agencies of this state in the implementation of community  
28 punishment programs.

29 (6) Direct the Departments and other entities involved in the  
30 implementation of community punishment options in a manner that will *promote*  
31 *the safety and welfare of the people of this state.*

32 (7) Establish rules, regulations, and procedures which shall be required  
33 or deemed appropriate for the implementation and ongoing operation of  
34 community punishment.

35 (8) Establish minimum standards of eligibility and certification

1 processes for all community punishment programs eligible to receive offenders  
2 under this act.

3

4 SECTION 5. Operation and Supervision of Community Punishment Programs.

5 The Board shall promulgate policies, rules, and regulations relating to the  
6 operation of community punishment *facilities*, programs and supervision of  
7 eligible offenders participating therein and the termination of that  
8 participation including, but not limited to:

9 (1) The terms, conditions, and qualifications of program eligibility;

10 (2) The time to be spent in specific punishment and treatment programs  
11 designated as community punishment;

12 (3) Receipt of compensation in the form of fees or other available  
13 sources from the eligible offender while participating in a community  
14 punishment program;

15 (4) Allocation of compensation received by an eligible offender while  
16 participating in a community punishment program, including designation to the  
17 Department of Community Punishment of a percentage of any compensation  
18 received for the purpose of defraying the costs to the Department of Community  
19 Punishment of establishing and operating community punishment programs and/or  
20 the costs of the offender's custody and care.

21 (5) Receipt of compensation from public entities who benefit from the  
22 labor of offenders involved in community punishment work programs.

23 (6) Collection of economic sanctions imposed by the court, including but  
24 not limited to restitution, fines, fees, or other monetary penalties attached  
25 to an offender's sentence.

26 (7) *The Department of Community Punishment shall supervise all eligible*  
27 *offenders participating in any community punishment program with the goal of*  
28 *promoting the safety and welfare of the people of the state.*

29

30 SECTION 6. Sentencing Alternatives.

31 (a) (1) *The trial court may require* that either a Pre-sentence  
32 Investigation(PSI) be conducted by either the probation officer or PSI officer  
33 assigned to the court or may require that the defense counsel of the person,  
34 the prosecuting authority, the probation officer, and other persons whom the  
35 trial court believes have knowledge or information relevant to the sentencing

1 of the convicted person, submit to the trial court such information in writing  
2 for the sentencing phase of the trial.

3           (2) Either the PSI or information gathered by the above mentioned  
4 parties shall be forwarded, with the commitment, *to be retained in offender's*  
5 *file.*

6           (b) Upon determination by the court, that the offender is an eligible  
7 offender, and that placement in a community punishment program is proper, the  
8 court may utilize the following methods of placement:

9           (1) Suspend the imposition of the sentence or place the offender  
10 on probation, *pursuant to Arkansas Code Annotated 5-4-104 through 5-4-311.*  
11 *This sentence may be accompanied by assignment to a community punishment*  
12 *program(s) for a designated period of time commensurate with the goals of the*  
13 *program assignment and the rules and regulations established by the Board for*  
14 *the operation of community punishment programs. The trial court shall*  
15 *maintain jurisdiction over the eligible offender sentenced in this manner with*  
16 *supervision outside the confines of the specific programming provided by*  
17 *probation officers assigned to the court.*

18           (2) In the event a person sentenced under subdivision (1) of this  
19 act violates any terms or conditions of his sentence or term of probation,  
20 revocation of the sentence or term of probation shall be consistent with the  
21 procedures established by law for the revocation of suspended imposition of  
22 *sentence or probation. Upon revocation, the court of jurisdiction shall*  
23 *determine whether the offender shall remain under the jurisdiction of the*  
24 *court and be assigned to a more restrictive community punishment program,*  
25 *facility, or institution for a period of time or whether the offender shall be*  
26 *committed to the Department of Correction. If committed to the Department of*  
27 *Correction, the court shall specify if the commitment is for judicial transfer*  
28 *of the offender to the Department of Community Punishment or is a regular*  
29 *commitment.*

30           (3) *Commit the eligible offender to the custody of the Department of*  
31 *Correction pursuant to this act for judicial transfer to the Department of*  
32 *Community Punishment subject to the following: that the sentence imposed*  
33 *provides that the offender shall serve no more than two (2) years of*  
34 *confinement, with credit for meritorious good time, in a Department of*  
35 *Community Punishment facility and that the initial placement in the Department*

1 of Community Punishment is conditioned upon the offenders's compliance with  
2 all applicable rules and regulations established by the Board of Correction  
3 and Community Punishment for community punishment programs. Post prison  
4 supervision shall accompany and follow programming when appropriate.

5

6 SECTION 7. Order of Court. (a) Upon the sentencing or placing on  
7 probation of any person under the provisions of this act, the sentencing court  
8 shall issue an order or commitment, whichever is appropriate, in writing,  
9 setting forth the following:

10 (1) That the offender is being committed to the Department of  
11 Correction; committed to the Department of Correction with judicial transfer  
12 to the Department of Community Punishment; placed on suspended imposition of  
13 sentence or placed on probation under the provisions of this act;

14 (2) That the offender has knowledge and understanding of the  
15 consequences of this sentence or placement on probation and violations  
16 thereof;

17 (3) A designation of sentence/supervision length along with  
18 community punishment program distinctions of that sentence/supervision length;

19 (4) Any applicable terms and conditions of the sentence or  
20 probation term;

21 (5) PSI or sentencing information including but not limited to  
22 criminal history elements and other appropriate or necessary information for  
23 correctional use.

24 (b) Upon the successful completion of probation or a commitment to the  
25 Arkansas Department of Correction with judicial transfer to the Department of  
26 Community Punishment for one of the offenses targeted by the Arkansas General  
27 Assembly for community punishment placement, the court may direct that the  
28 record of the offender be expunged of the offense of which the offender was  
29 convicted under the following conditions:

30 (1) That the offender was under the age of twenty-six (26) years  
31 at the time of the commission of the felony offense and had no more than one  
32 (1) previous felony conviction and that the previous felony was other than a  
33 conviction for a capital offense, or murder in the first degree, murder in the  
34 second degree, first degree rape or kidnapping, or aggravated robbery; or

35 (2) That the offender was over the age of eighteen (18) years of

1 age and does not have a previous conviction for the offense of delivering  
2 controlled substances to a minor, as prohibited in 5-64-701(a) (2); or  
3 (3) That the offender has no prior *felony* convictions; and  
4 (4) The fact that a prior felony conviction has been previously  
5 expunged shall not prevent its counting as a prior conviction for the purposes  
6 of this subsection.

7

8 SECTION 8. Post Commitment Transfer.

9 (a) (1) Upon commitment of an eligible offender to the Department of  
10 Correction, the Department *will* transfer an eligible offender to a community  
11 punishment program, when he reaches his transfer date, in accordance with the  
12 rules and regulations promulgated by the Board of Correction and Community  
13 Punishment and conditions set by the Post Prison Transfer Board. Legal  
14 custody of inmates transferred to the Department of Community Punishment shall  
15 remain with the Department of Correction unless altered by court order.

16 (2) When a sentence is given which is outside the presumptive  
17 range set in the sentencing standards and which is not accompanied by written  
18 reasons for the departure, an offender may be transferred to community  
19 punishment or considered for any discretionary release applicable under the  
20 law as if he had received the presumptive sentence and the transfer or  
21 releasing authority may review, grant, or deny transfer or release based on  
22 any eligibility established by the presumptive sentence term.

23 (3) Persons eligible for release from incarceration on parole may  
24 be placed in community punishment programming while under parole supervision  
25 upon the recommendation of such condition by the releasing authority.

26 (4) Removal from community punishment programs shall be in  
27 accordance with all legal procedural requirements applicable to parole  
28 revocation.

29 (b) (1) The Board of Correction and Community Punishment and the  
30 Department of Correction are authorized to release medical and psychological  
31 data in their possession to a community punishment service provider concerning  
32 an eligible offender transferred to such community punishment program.

33 (2) The community punishment service provider shall use any  
34 medical or psychological data received from the Department of Correction and  
35 the Board in compliance with rules concerning the use of such data as adopted

1 by the Board.

2

3           SECTION 9. Liability. The Department of Correction, the Board of  
4 Correction and Community Punishment, the Department of Community Punishment,  
5 *the Post Prison Transfer Board* and all governmental agencies and units  
6 utilizing eligible offenders in community punishment programs as defined  
7 herein shall be immune from liability and suit for damages, and no tort action  
8 shall lie against the Department of Correction, the Board of Correction and  
9 Community Punishment, the Department of Community Punishment, *the Post Prison*  
10 *Transfer Board*, and any governmental agency or unit or any employee thereof  
11 because of any acts of eligible offenders utilized under the provisions of  
12 this act.

13

14           SECTION 10. Sentence Optional. Nothing in this act shall grant any  
15 offender the right to be sentenced or transferred under these provisions as a  
16 matter of right.

17

18           SECTION 11. Arkansas Code Annotated §§16-93-501 through 16-93-510 are  
19 repealed effective *January 1, 1994*.

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21           SECTION 12. All provisions of this act of a general and permanent  
22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
23 Code Revision Commission shall incorporate the same in the Code.

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25           SECTION 13. If any provision of this act or the application thereof to  
26 any person or circumstance is held invalid, such invalidity shall not affect  
27 other provisions or applications of the act which can be given effect without  
28 the invalid provision or application, and to this end the provisions of this  
29 act are declared to be severable.

30

31           SECTION 14. All laws and parts of laws in conflict with this act are  
32 hereby repealed.

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*/s/ Senator Bookout*

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APPROVED: 03-16-93

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