

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

# **A Bill**

**HOUSE BILL 1461**

4 **By: Representatives Hendrix and Hogue**

5

6

7

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

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§16-93-201 -  
9 16-93-205 TO CHANGE THE NAME OF THE STATE BOARD OF PAROLE  
10 AND COMMUNITY REHABILITATION TO THE POST PRISON TRANSFER  
11 BOARD AND REDEFINE ITS POWERS AND DUTIES; AND FOR OTHER  
12 PURPOSES."

13

14

## **Subtitle**

15 "TO CHANGE THE NAME OF THE STATE BOARD OF PAROLE AND  
16 REDEFINE ITS DUTIES"

17

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

19

20 *SECTION 1. Arkansas Code Annotated 16-93-201 is amended to read as*  
21 *follows:*

22 *"16-93-201. Creation - Members.*

23 *(a) (1) Effective January 1, 1994, there is hereby created the Post*  
24 *Prison Transfer Board to be composed of seven (7) members to be appointed by*  
25 *the Governor and confirmed by the Senate.*

26 *(2) One (1) member of the board shall be appointed from each*  
27 *congressional district and the remaining members shall be appointed from the*  
28 *state-at-large. The terms shall be seven (7) years long and members shall*  
29 *serve until their replacement is appointed.*

30 *(b) If any vacancy shall occur on the Post Prison Transfer Board prior*  
31 *to the expiration of the term, the Governor shall fill such vacancy for the*  
32 *remainder of the unexpired term, subject to confirmation by the Senate at its*  
33 *next regular session.*

34 *(c) (1) Four (4) members of the Post Prison Transfer Board shall receive*  
35 *the same amount per day as is paid to the members of the Arkansas Board of*

1 Correction and Community Punishment for each day they are actually engaged in  
2 attending the official board meetings or official board business. In addition  
3 thereto, these four (4) members shall be entitled to be compensated for actual  
4 expenses incurred in the attendance of such meetings or business and shall be  
5 entitled to be compensated for mileage at the same rate authorized by state  
6 travel regulations for state employees for each mile traveled in attending  
7 official board meetings or board business.

8           (2) The reimbursement for use of private airplanes shall be in  
9 accordance with state travel regulations.

10           (3) The moneys to be paid and reimbursed to board members  
11 pursuant to this subsection shall be payable from funds made available for  
12 that purpose by law.

13           (d) (1) One (1) member of the Post Prison Transfer Board shall be a  
14 full-time official of the State of Arkansas, and shall be designated as the  
15 Chairman of the Post Prison Transfer Board.

16           (2) The Chairman of the Post Prison Transfer Board shall be  
17 appointed by the Governor and confirmed by the Senate.

18           (3) If a vacancy in this position shall occur prior to the  
19 expiration of the term, the Governor shall fill such vacancy for the remainder  
20 of the unexpired term, subject to confirmation by the Senate at its next  
21 regular session.

22           (e) The remaining two (2) members of the Post Prison Transfer Board  
23 shall also be full-time officials of the State of Arkansas to be appointed by  
24 the Governor and confirmed by the Senate.

25           (f) No member of the Post Prison Transfer Board shall serve more than  
26 one (1) full term.

27           (g) Board members may be removed by the Governor in the manner provided  
28 in § 25-17-210.

29           (h) Four (4) members of the Post Prison Transfer Board shall constitute  
30 a quorum.

31

32           SECTION 2. Board Procedures.

33           (a) (1) For those persons eligible for parole, the Post Prison Transfer  
34 Board shall retain the power to determine what persons shall be placed on  
35 parole and to fix the time and conditions of the parole.

1           (2) The Post Prison Transfer Board shall conduct open meetings  
2 and shall make public its findings for each eligible candidate for parole.

3           (3) Inmate interviews may be closed to the public.

4           (4) The Post Prison Transfer Board retains the right to formulate  
5 all policies, rules, and regulations regarding parole, including amendments to  
6 those previously formulated by the Parole Board.

7           (b)(1) For persons who commit felonies, except those enumerated in  
8 (c)(1) below on or after January 1, 1994, under the provisions of a transfer  
9 date, the Department of Correction will transfer inmates to the Department of  
10 Community Punishment subject to rules and regulations promulgated by the Board  
11 of Correction and Community Punishment and conditions set by the Post Prison  
12 Transfer Board. The conditions under which transfer shall occur include, but  
13 are not limited to, level of supervision, economic fee sanction, treatment  
14 program and/or other conditions relevant to the individual under review. This  
15 review may be conducted without a hearing when the inmate has not received a  
16 major disciplinary report against him which resulted in the loss of good time;  
17 there has not been a request by a victim to have input on transfer conditions;  
18 and there is no indication in the risk/needs assessment review that special  
19 conditions need to be placed on the inmate.

20           (2) When one or more of the circumstances in (b)(1) are present,  
21 the Post Prison Transfer Board shall conduct a hearing to determine the  
22 appropriateness of the inmate for transfer. The Post Prison Transfer Board  
23 has two options:

24           (i) To transfer the individual to the Department of  
25 Community Punishment accompanied by conditions of such transfer including, but  
26 not limited to, supervision levels, programming requirements, and facility  
27 placement when appropriate; or

28           (ii) To deny transfer based on a set of established  
29 criteria and to accompany such denial with a course of action to be undertaken  
30 by the inmate to rectify the Post Prison Transfer Board concerns. Upon  
31 completion of the course of action determined by the Post Prison Transfer  
32 Board, after final review of the inmate\_s file to ensure successful  
33 completion, the Post Prison Transfer Board shall authorize the inmate\_s  
34 transfer to the Department of Community Punishment in accordance with  
35 administrative policies and procedures governing such transfer and subject to

1 conditions attached to such transfer.

2           (3) Should an inmate fail to fulfill the course of action  
3 outlined by the Post Prison Transfer Board to facilitate transfer to Community  
4 Punishment, it shall be the responsibility of such inmate to petition the Post  
5 Prison Transfer Board for rehearing.

6           (4) The course of action required by the Post Prison Transfer  
7 Board shall not be outside the current resources of the Department of  
8 Correction nor shall conditions set be outside the current resources of the  
9 Department of Community Punishment. However, the Departments shall strive to  
10 accommodate the actions required by the board, to the best of their ability.

11           (c) (1) Persons who commit the following Class Y felonies on or after  
12 January 1, 1994, shall be eligible to be considered for discretionary transfer  
13 to the Department of Community Punishment by the Post Prison Transfer Board  
14 after having served one-third (1/3) or one-half (1/2), with credit for  
15 meritorious good time, of their sentence, depending on the seriousness  
16 determination made by the Arkansas Sentencing Commission, or one-half (1/2),  
17 with credit for meritorious good time, of the time to which their sentence is  
18 commuted by executive clemency: murder in the first degree, kidnapping, rape,  
19 aggravated robbery, causing a catastrophe, engaging in a continuing criminal  
20 enterprise, Arkansas Code Annotated 5-64-414, manufacturing or delivery of a  
21 Schedule I or II controlled substance which by aggregate weight including  
22 adulterants or diluents is greater than twenty-eight (28) grams. See,  
23 Arkansas Code Annotated 5-64-401(a) (1) (i).

24           (2) The transfer of offenders convicted of the above listed  
25 offenses is not automatic. The Post Prison Transfer Board will have the  
26 authority to transfer such inmates at a time when based on a combination of  
27 its opinion and appropriate assessment by a risk/needs assessment tool there  
28 is reasonable probability that the inmate can be released without detriment to  
29 the community or himself.

30           (3) Notification of the court, prosecutor, sheriff, and the  
31 victim or the victim\_s next of kin shall follow the procedures set forth  
32 below:

33                   (i) (a) Before the Post Prison Transfer Board shall grant  
34 any transfer, the board shall solicit the written or oral recommendations of  
35 the committing court, the prosecuting attorney, and the sheriff of the county

1 from which the inmate was committed.

2 (b) If the person whose transfer is being considered  
3 by the board was convicted of one (1) of the enumerated Class Y felonies, the  
4 board shall also notify the victim of the crime, or the victim's next of kin,  
5 of the transfer hearing and shall solicit written or oral recommendations of  
6 the victim or his next of kin regarding the granting of the transfer, unless  
7 the prosecuting attorney has notified the board at the time of commitment of  
8 the prisoner that the victim or his next of kin does not want to be notified  
9 of future transfer hearings.

10 (c) The recommendations shall not be binding upon the  
11 board in the granting of any transfer, but shall be maintained in the inmate's  
12 file.

13 (d) When soliciting recommendations from a victim of  
14 a crime, the board shall notify the victim or his next of kin of the date,  
15 time, and place of the transfer hearing.

16 (ii) (a) The Post Prison Transfer Board shall not schedule  
17 transfer hearings at which victims or relatives of victims of crime are  
18 invited to appear at a facility wherein inmates are housed other than the  
19 Central Administration Building of the Department of Correction at Pine Bluff.

20 (b) Nothing herein shall be construed as prohibiting  
21 the Post Prison Transfer Board from conducting transfer hearings in two (2)  
22 sessions, one (1) at the place of the inmate's incarceration for interviews  
23 with the inmate, the inmate's witnesses, and correctional personnel, and the  
24 second session for victims and relatives of victims as set out in subparagraph  
25 (ii) (a).

26 (iii) (a) At the time that any person eligible under Section  
27 2(c) (1) is transferred by the Post Prison Transfer Board, the Department of  
28 Community Punishment shall give written notice of the granting of the transfer  
29 to the sheriff, the committing court, and the chief of police of all cities of  
30 the first class of the county from which the person was sentenced.

31 (b) If the person is transferred to a county other  
32 than that from which he was committed, the board shall give notice to the  
33 chief of police or marshal of the city to which he is transferred, to the  
34 chief of police of all cities of the first class and the sheriff of the county  
35 to which he is transferred, and to the sheriff of the county from which the

1 person was committed.

2 (iv) (a) It shall be the responsibility of the prosecuting  
3 attorney of the county from which the inmate was committed to notify the Post  
4 Prison Transfer Board at the time of commitment of the desire of the victim,  
5 or his next of kin, to be notified of any future transfer hearings and to  
6 forward to the board the last known address and telephone number of the victim  
7 or his next of kin.

8 (b) It shall be the responsibility of the victim or  
9 his next of kin to notify the board of any change in address or telephone  
10 number.

11 (c) It shall be the responsibility of the victim or  
12 his next of kin to notify the board after the date of commitment of any change  
13 in regard to the desire to be notified of any future transfer hearings.

14 (d) (1) In all other felonies, before the Post Prison Transfer Board  
15 sets conditions for transfer of an inmate to community punishment, victims or  
16 their next of kin, in cases where the victim is unable to express his wishes,  
17 who have expressed their wish to be consulted by the Board, shall be notified  
18 of the date, time and place of the transfer hearing.

19 (2) Victims or their next of kin who wish to be consulted by the  
20 Board shall inform the Board in writing at the time of sentencing. Victims or  
21 their next of kin who do not so inform the Board shall not be notified by the  
22 Board.

23 (3) Victim input to the Board shall be limited to oral or written  
24 recommendations on conditions relevant to the offender under review for  
25 transfer. The recommendations shall not be binding on the Board, but shall be  
26 given due consideration within the resources available for transfer.

27 (e) The Post Prison Transfer Board shall approve a set of conditions  
28 which shall be applicable to all inmates transferred from the Department of  
29 Correction to the Department of Community Punishment. Such set of conditions  
30 is subject to periodic review and revision as the Post Prison Transfer Board  
31 deems necessary.

32 (f) The Post Prison Transfer Board shall set such conditions as  
33 necessary within the range of correctional resources available at the time of  
34 transfer.

35 (g) (1) The Post Prison Transfer Board shall serve as the revocation

1 review board for persons subject to either parole or transfer from prison.

2 (2) Revocation proceedings for either parole or transfer shall  
3 follow all legal requirements applicable to parole and shall be subject to any  
4 additional policies, rules, and regulations set by the Post Prison Transfer  
5 Board.

6 (h) Decisions on parole release, courses of action applicable prior to  
7 transfer, and transfer conditions to be set by the Post Prison Transfer Board  
8 shall be based on a reasoned, rational plan, developed in conjunction with an  
9 accepted risk needs assessment tool, such that each decision is defensible  
10 based on pre-established criteria."

11

12 SECTION 3. Arkansas Code Annotated 16-93-202 is amended to read as  
13 follows:

14 "16-93-202. Seal - Records and reports.

15 (a) The Post Prison Transfer Board shall adopt an official seal of  
16 which the courts shall take judicial notice.

17 (b) The Post Prison Transfer Board shall keep a record of its acts and  
18 shall notify each institution and facility of its decision relating to persons  
19 who have been confined therein.

20 (c)(1) An annual report in writing shall be made by the Post Prison  
21 Transfer Board on or before February 1 of each year for the preceding year.

22 (2) The report shall be directed to the Governor and to the  
23 General Assembly and shall contain statistical and other data concerning its  
24 work, including research studies which it may make on parole or related  
25 functions.

26 (d) A presentence report, a preparole report, and a supervision history  
27 obtained in the discharge of official duty by any member or employee of the  
28 Post Prison Transfer Board, shall be privileged and shall not be disclosed,  
29 directly or indirectly, to any person other than the Post Prison Transfer  
30 Board, a court, or others entitled under this chapter to receive the  
31 information. However, the Post Prison Transfer Board or court, at its  
32 discretion, may permit the inspection of the report, or parts thereof, by  
33 persons having a proper interest therein, whenever the interests or welfare of  
34 the person involved make that action desirable or helpful."

35

1           SECTION 4. Arkansas Code Annotated 16-93-203 is amended to read as  
2 follows:

3           "16-93-203. Cooperation from correctional officials.

4           It shall be the duty of all correctional officials to grant to the  
5 members of the Post Prison Transfer Board, or its properly accredited  
6 representatives, access at all reasonable times to any prisoner over whom the  
7 Post Prison Transfer Board has jurisdiction under this chapter, to provide the  
8 Post Prison Transfer Board and its representatives facilities for  
9 communicating with and observing such person and to furnish the Post Prison  
10 Transfer Board such reports as the Post Prison Transfer Board shall require  
11 concerning the conduct and character of any prisoner in their custody and any  
12 facts deemed by the Post Prison Transfer Board pertinent in determining  
13 whether the prisoner shall be transferred, under what conditions the prisoner  
14 shall be transferred, or whether the prisoner shall be paroled."

15

16           SECTION 5. Arkansas Code Annotated 16-93-204 is amended to read as  
17 follows:

18           "16-93-204. Executive clemency.

19           (a) All applications for pardon, commutation of sentence, reprieve,  
20 respite, or remission of fine or forfeiture shall be referred to the Post  
21 Prison Transfer Board for investigation.

22           (b) The Post Prison Transfer Board shall thereupon investigate each  
23 case and shall submit to the Governor its recommendation, a report of the  
24 investigation, and all other information the Post Prison Transfer Board may  
25 have regarding the applicant.

26           (c) (1) Before the Post Prison Transfer Board shall consider an  
27 application for a pardon or recommend a commutation of sentence, the board  
28 shall solicit the written or oral recommendation of the committing court, the  
29 prosecuting attorney, and the sheriff of the county from which the person was  
30 committed.

31           (2) Before considering an application for a pardon or  
32 recommending a commutation of sentence of a person who was convicted of  
33 capital murder, or a Class Y, Class A, or Class B felony, the board shall  
34 notify the victim of the crime or the victim's next of kin, if he or she files  
35 a request for notice with the prosecuting attorney. When the board provides



1 notice under this subsection, the board shall solicit the written or oral  
2 recommendations of the victim or his next of kin regarding the granting of a  
3 pardon or commutation of sentence.

4           (3) The board shall retain a copy of the recommendations in the  
5 board's file.

6           (4) The recommendations shall not be binding upon the board in  
7 advising the Governor whether to grant a pardon or commute a sentence, but  
8 shall be maintained in the inmate's file.

9           (5) If a hearing will be held on the application, the board shall  
10 notify the victim or his next of kin of the date, time, and place of the  
11 hearing. The notice shall be given when soliciting the recommendations of the  
12 victim of the crime or his next of kin."

13

14           SECTION 6. Arkansas Code Annotated 16-93-205 is amended to read as  
15 follows:

16           "16-93-205. Parole of Arkansas inmates in out-of-state prisons.

17           (a) The Post Prison Transfer Board may request the appropriate board or  
18 commission having jurisdiction over parole or transfer matters in other  
19 states, or the United States Parole Commission, to make recommendations  
20 concerning whether Arkansas inmates confined in prison systems of the other  
21 states, or in federal prisons, should be granted parole or transfer when  
22 eligible under Arkansas law.

23           (b) The Post Prison Transfer Board may, at its option, take action on  
24 the application of the inmate for parole, using as its criteria the  
25 recommendations received from the appropriate board or commission of the other  
26 states, or the United States Parole Commission, in lieu of the personal  
27 appearance before the board of the inmate seeking parole or transfer."

28

29           SECTION 7. All provisions of this act of a general and permanent nature  
30 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
31 Revision Commission shall incorporate the same in the Code.

32

33           SECTION 8. If any provision of this act or the application thereof to  
34 any person or circumstance is held invalid, such invalidity shall not affect  
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this  
2 act are declared to be severable.

3

4       SECTION 9. All laws and parts of laws in conflict with this act are  
5 hereby repealed.

6

/s/B.G. Hendrix, et al

7

8