

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Representatives Gibson, Hendrix, Hogue, and Walker**

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For An Act To Be Entitled

8 "THE COMMUNITY PUNISHMENT ACT."

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Subtitle

11 "THE COMMUNITY PUNISHMENT ACT."

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

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

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

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

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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.

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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.

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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 Code

12 Section Name of crime

13 5 26 401 Nonsupport

14 5 36 103 Theft of property (Class B, C and D)

15 5 36 104 Theft of services (Class B and C)

16 5 36 105Theft of property lost, mislaid, delivered by mistake

17 5 36 106 Theft by receiving (Class B and C)

18 5 36 115 Theft of leased or rented prop. (Class B and C)

19 5 37 201 Forgery (first and second degrees)

20 5 37 203 Defrauding secured creditors

21 5 37 204 Fraud in insolvency

22 5 37 207 Fraud use of a credit card

23 5 37 209 Possession of forgery device

24 5 37 210 Obtaining signature by deception

25 5 37 211 Defrauding judgment creditors

26 5 37 212 Using slugs of \$100 or more

27 5 37 213 Criminal simulation

28 5 37 302 Hot checks (Class B and C)

29 5 37 524Fraud in acquisition of authority to provide motor vehicle

30 transportation of property

31 5 37 525 Defrauding a materialman of \$5000 or more

32 5 38 203 Criminal Mischief I

33 5 38 204 Criminal Mischief II

34 5 39 201 Commercial burglary

35 5 39 202 Breaking and entering

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

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

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

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

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

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

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

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

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

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

34 (8) Establish minimum standards of eligibility and certification
35 processes for all community punishment programs eligible to receive offenders

1 under this act.

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

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

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

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

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

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

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

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

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

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29 SECTION 6. Sentencing Alternatives.

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

1 for the sentencing phase of the trial.

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

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

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

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

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

1 all applicable rules and regulations established by the Board of Correction
2 and Community Punishment for community punishment programs. Post prison
3 supervision shall accompany and follow programming when appropriate.

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5 SECTION 7. Order of Court.

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

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

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

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

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

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

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

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

34 (2) That the offender was over the age of eighteen (18) years of
35 age and does not have a previous conviction for the offense of delivering

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

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7 SECTION 8. Post Commitment Transfer.

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

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

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

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

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

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

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

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

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

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

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

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

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/s/Bynum Gibson, et al