

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

A Bill

HOUSE BILL 1470

4 **By: Representatives M. Wilson and Gibson**

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For An Act To Be Entitled

8 "AN ACT TO ESTABLISH CRITERIA FOR INMATE TRANSFER
9 ELIGIBILITY TO COMMUNITY PUNISHMENT PROGRAMS; AND FOR
10 OTHER PURPOSES."

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Subtitle

13 "CRITERIA FOR INMATE TRANSFER ELIGIBILITY TO COMMUNITY
14 PUNISHMENT PROGRAMS"

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

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18 *SECTION 1. Transfer Provisions.*

19 *(a) As used in this act, "felonies" mean those crimes classified as*
20 *Class Y, Class A, Class B, Class C, Class D, or unclassified felonies by the*
21 *laws of this state.*

22 *(b) Persons who committed felonies prior to January 1, 1994, and who*
23 *were convicted and incarcerated for those felonies, shall be eligible for*
24 *release on parole in accordance with the parole eligibility law in effect at*
25 *the time the crime was committed.*

26 *(c) Persons who commit felonies on or after January 1, 1994, and who*
27 *shall be convicted and incarcerated for those felonies, shall be eligible for*
28 *transfer to community punishment as follows:*

29 *(1) Inmates under sentence of death or life imprisonment without*
30 *parole shall not be eligible for transfer but may be pardoned or have their*
31 *sentence commuted by the Governor, as provided by law. Inmates sentenced to*
32 *life imprisonment shall not be eligible for transfer unless the sentence is*
33 *commuted to a term of years by executive clemency. Upon commutation, the*
34 *inmate shall be eligible for transfer as provided in this act.*

35 *(2) Offenders convicted of a target offense under the Community*

1 Punishment Act may be committed to the Department of Correction and judicially
2 transferred to the Department of Community Punishment by specific provision in
3 the commitment that the trial court orders such a transfer. A copy of such
4 commitment shall be immediately forwarded to the Department of Correction and
5 the Department of Community Punishment. The Department of Community
6 Punishment shall take over supervision of the offender in accord with the
7 order of the court. The offender shall not be transported to the Department
8 of Correction. The Department of Community Punishment shall provide for the
9 appropriate disposition of the offender as expeditiously as practicable under
10 rules and regulations developed by the Board of Correction and Community
11 Punishment.

12 (3) All other classified or unclassified felons who are
13 incarcerated therefor, shall be eligible for transfer to community punishment
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. For example, a six (6) year sentence with
19 optimal meritorious good time credits will make the offender eligible for
20 transfer in one (1) year if he is required to serve one third (1/3) of his
21 sentence, or one and one-half (1 1/2) years if he is required to serve one-
22 half (1/2) of his sentence.

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24 SECTION 2. Transfer Procedures.

25 (a) (1) Inmates under sentence for all felonies except those listed in
26 subsection (b) will be transferred from the Department of Correction to the
27 Department of Community Punishment subject to rules and regulations
28 promulgated by the Board of Correction and Community Punishment and conditions
29 set by the Post Prison Transfer Board. This review may be conducted without a
30 hearing when the inmate has not received a major disciplinary report against
31 him which resulted in the loss of good time; there has not been a request by a
32 victim to have input on transfer conditions and there is no indication in the
33 risk/needs assessment review that special conditions need to be placed on the
34 inmate.

35 (2) When one or more of the circumstances in (a) (1) are present,

1 the Post Prison Transfer Board shall conduct a hearing to determine the
2 appropriateness of the inmate for transfer. The Post Prison Transfer Board
3 has two options:

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

8 (ii) To deny transfer based on a set of established
9 criteria and to accompany such denial with a course of action to be undertaken
10 by the inmate to rectify the Post Prison Transfer Board concerns. Upon
11 completion of the course of action determined by the Post Prison Transfer
12 Board, after final review of the inmate_s file to ensure successful
13 completion, the Post Prison Transfer Board shall authorize the inmate_s
14 transfer to the Department of Community Punishment in accordance with
15 administrative policies and procedures governing such transfer and subject to
16 conditions attached to such transfer.

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

21 (b) Inmates under sentence for the following Class Y felonies shall be
22 eligible for discretionary transfer to the Department of Community Punishment
23 by the Post Prison Transfer Board after having served the time required as set
24 by the Arkansas Sentencing Commission with credit for meritorious good time:
25 murder in the first degree, kidnapping, rape, aggravated robbery, causing a
26 catastrophe, engaging in a continuing criminal enterprise, and the manufacture
27 or delivery of a schedule I or II controlled substance which by aggregate
28 weight including adulterants or diluents is greater than twenty-eight (28)
29 grams. Review of inmates convicted of the enumerated offenses above shall be
30 based upon policies and procedures adopted by the Post Prison Transfer Board
31 for such review. Such policies and procedures shall include provision for
32 notification of victims, that a hearing shall be held and records kept of such
33 proceedings and that there be a listing of the criteria upon which a denial
34 may be based. All transfers of offenders specified in this subsection shall
35 be issued upon order, duly adopted, of the Post Prison Transfer Board in

1 accord with such policies and procedures.

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

7 (d) Transfer is not an award of clemency and it shall not be considered
8 as a reduction of sentence or a pardon.

9 (e) Every inmate while on transfer status shall remain in the legal
10 custody of the Department of Correction, under the supervision of the
11 Department of Community Punishment and subject to the orders of the Post
12 Prison Transfer Board.

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14 SECTION 3. Computation of Sentence.

15 (a) Time served shall be deemed to begin on the day sentence is
16 imposed, not on the day a prisoner is received by the Department of
17 Correction. It shall continue only during the time in which an individual is
18 actually confined in a county jail or other local place of lawful confinement
19 or while under the custody and supervision of the Department of Correction.
20 Once sentenced to the Department of Correction, the Department shall retain
21 legal custody of the inmate for the duration of the original sentence.

22 (b) The sentencing judge shall direct, when he imposes sentence, that
23 time already served by the defendant in jail or other place of detention shall
24 be credited against the sentence.

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26 SECTION 4. Revocation of Transfer.

27 In the event a person transferred under the provision of this act
28 violates the terms or conditions of his transfer, revocation procedures shall
29 follow all legal requirements applicable to parole in Arkansas Code Annotated
30 16-93-705 and 16-93-706 and shall be subject to any additional policies,
31 rules, and regulations set by the Post Prison Transfer Board.

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33 SECTION 5. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

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SECTION 6. 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 7. All laws and parts of laws in conflict with this act are hereby repealed.

/s/Mike Wilson, et al

As Engrossed: 2/17/93 3/10/93

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