

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

A Bill

SENATE BILL 360

4 **By: Senators Bookout, Cassady, Fitch, Bell, Edwards, Lewellen, and Everett**

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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."

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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 *SECTION 2. Board Procedures.*

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

35 (2) The Post Prison Transfer Board shall conduct open meetings and

1 shall make public its findings for each eligible candidate for parole.

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

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

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

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

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

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

35 (3) *Should an inmate fail to fulfill the course of action outlined*

1 by the Post Prison Transfer Board to facilitate transfer to Community
2 Punishment, it shall be the responsibility of such inmate to petition the Post
3 Prison Transfer Board for rehearing.

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

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

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

28 (3) Notification of the court, prosecutor, sheriff, and the victim
29 or the victim_s next of kin shall follow the procedures set forth below:

30 (i) (a) Before the Post Prison Transfer Board shall grant
31 any transfer, the board shall solicit the written or oral recommendations of
32 the committing court, the prosecuting attorney, and the sheriff of the county
33 from which the inmate was committed.

34 (b) If the person whose transfer is being considered
35 by the board was convicted of one (1) of the enumerated Class Y felonies, the

1 board shall also notify the victim of the crime, or the victim's next of kin,
2 of the transfer hearing and shall solicit written or oral recommendations of
3 the victim or his next of kin regarding the granting of the transfer, unless
4 the prosecuting attorney has notified the board at the time of commitment of
5 the prisoner that the victim or his next of kin does not want to be notified
6 of future transfer hearings.

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

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

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

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

23 (iii) (a) At the time that any person eligible under Section
24 2(c) (1) is transferred by the Post Prison Transfer Board, the Department of
25 Community Punishment shall give written notice of the granting of the transfer
26 to the sheriff, the committing court, and the chief of police of all cities of
27 the first class of the county from which the person was sentenced.

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

34 (iv) (a) It shall be the responsibility of the prosecuting
35 attorney of the county from which the inmate was committed to notify the Post

1 Prison Transfer Board at the time of commitment of the desire of the victim,
2 or his next of kin, to be notified of any future transfer hearings and to
3 forward to the board the last known address and telephone number of the victim
4 or his next of kin.

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

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

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

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

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

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

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

32 (g) (1) The Post Prison Transfer Board shall serve as the revocation
33 review board for persons subject to either parole or transfer from prison.

34 (2) Revocation proceedings for either parole or transfer shall
35 follow all legal requirements applicable to parole and shall be subject to any

1 additional policies, rules, and regulations set by the Post Prison Transfer
2 Board.

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

8

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

11 "16-93-202. Seal - Records and reports.

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

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

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

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

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

32

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

35 "16-93-203. Cooperation from correctional officials.

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

12

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

15 "16-93-204. Executive clemency.

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

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

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

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

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

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

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

10

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

13 "16-93-205. Parole of Arkansas inmates in out-of-state prisons.

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

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

25

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

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

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