

1 **State of Arkansas**

2 **79th General Assembly**

3 **Regular Session, 1993**

4 **By: Senators Gordon, Bookout, Cassady, Fitch, Edwards, Ross, and Everett**

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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 incarcerated
13 therefor, shall be eligible for transfer to community punishment after having
14 served one-third (1/3) or one-half (1/2), with credit for meritorious good
15 time, of their sentence depending on the seriousness determination made by the
16 Arkansas Sentencing Commission, or one-half (1/2), with credit for meritorious
17 good time, of the time to which their sentence is commuted by executive
18 clemency. For example, a six (6) year sentence with optimal meritorious good
19 time credits will make the offender eligible for transfer in one (1) year if
20 he is required to serve one third (1/3) of his sentence, or one and one-half
21 (1 1/2) years if he is required to serve one-half (1/2) of his sentence.

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23 SECTION 2. Transfer Procedures.

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

34 (2) When one or more of the circumstances in (a) (1) are present,
35 the Post Prison Transfer Board shall conduct a hearing to determine the

1 appropriateness of the inmate for transfer. The Post Prison Transfer Board
2 has two options:

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

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

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

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

35 (c) The course of action required by the Post Prison Transfer Board

1 shall not be outside the current resources of the Department of Correction nor
2 conditions set be outside the current resources of the Department of Community
3 Punishment. However, the Departments shall strive to accommodate the actions
4 required by the board, to the best of their ability.

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

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

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12 SECTION 3. Computation of Sentence.

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

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

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24 SECTION 4. Revocation of Transfer.

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

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

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35 SECTION 6. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

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

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/s/ Senators Gordon et al.

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