

By: Senator Bookout

"AN ACT TO ALLOW COURTS TO SENTENCE CERTAIN FELONS AND MISDEMEANANTS TO COMMUNITY SERVICE WORK; AND FOR OTHER PURPOSES."

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

SECTION 1. Purpose. The congested prison system has resulted in a number of changes within the criminal justice system that do not appear readily to the public eye. One major problem is that we have lost an interim sentencing alternative between placing a person on probation or a suspended sentence or sending that person to the prison system. This gap was filled in the past by incarcerating a person who received a felony suspended sentence which included, as a condition of the sentence, a period of incarceration in a local detention facility or incarcerating a person who received a misdemeanor sentence of up to one year in such a facility. As the prison system backlog inundated county detention facilities, those spaces were no longer available for these types of sentences. A result of the insufficient bedspace in county detention facilities has been that more people are actually being sent to the prison system in cases where incarceration in county detention facilities is a viable alternative punishment.

This Act will help bridge the gap that has been created. There are incentives for all facets of society. First, although the person sentenced will be incarcerated, he does have an opportunity to "work" his way out of being housed in the prison system. Also, the good time incentive allows the prisoner to reduce his period of incarceration, not only benefiting him, but also making it conducive for sheriffs to implement work projects and free up their jail space for more violent offenders. Budgetary cutbacks over the past five (5) years (for example, in revenue sharing funds from the federal government) have resulted in many community projects being neglected. An easy example is the clean-up of our cities, towns and highways of litter and debris. From the public's standpoint, this Act would most importantly provide a mechanism for providing these valuable services to the public at a minimal cost. It is believed that the public will approve of the use of manual labor by persons as a just punishment.

SECTION 2. Definitions. As used in this Act, unless the context otherwise requires:

(a) "Community Work Project" means any program in which county jail inmates are allowed to work under the supervision of governmental agencies on projects on public lands, buildings, roads, parks and public rights-of-way designed to benefit the governmental unit employing the inmates.

(b) "Work Incentive Credit" means that an inmate who voluntarily agrees to be sentenced under the appropriate provisions of this Act, and successfully performs such services, shall be entitled to receive up to three (3) days credit as designated by the sentencing court toward completion of the inmate's sentence for each day of such service performed.

(c) "Eligible Offender" means any person convicted of a misdemeanor offense or felony offense other than a capital felony offense, murder in the first degree, murder in the second degree, rape, kidnapping, aggravated

robbery, driving while intoxicated, negligent homicide, or the delivery, possession with intent to deliver, or manufacture of any controlled substance in violation of the Uniform Controlled Substances Act, Subchapters 1 through 6 of Chapter 64 of Title 5 of the Arkansas Code.

SECTION 3. Procedure. (a) Any consenting eligible offender who is convicted of a felony or misdemeanor, or who enters a plea of guilty or nolo contendere to a felony or misdemeanor, may upon recommendation of the Prosecuting Attorney be sentenced under this Act.

(b) The sentencing court may suspend imposition of the offender's sentence for a period not to exceed the period of years that is the maximum penalty for the offense convicted upon condition that the defendant be incarcerated in a county detention facility and participate in a Community Work Project. The length of such Community Work Project service and incarceration shall not exceed eighteen (18) months on a felony with Work Incentive Credit or, in the case of a misdemeanor, the maximum length of incarceration provided for the misdemeanor reduced by the Work Incentive Credit.

(c) In the event that during an offender's service under a Community Work Project sentence pursuant to this Act, the offender withdraws his consent to participate in the project, the sentencing court shall have the offender brought before the court within a reasonable time after receiving such notice from either the Sheriff of the county wherein the inmate is incarcerated or the Prosecuting Attorney of that county and make inquiries of the offender to determine whether or not consent to proceed under the program is being withdrawn. In the event that the court finds that the offender is withdrawing consent to participate in the Community Work Project, the court shall remand the offender to the Arkansas Department of Correction if the offense was a felony or, in the case of a misdemeanor to the sheriff of the county wherein the offense was committed, to serve the remaining portion of the offender's sentence. The offender shall be entitled to all good time and parole eligibility considerations as provided for by law. Any portion of the sentence which was suspended by the court at the time of the original sentence shall not be affected by the court's removal of an offender from participating in the Community Work Project.

(d) In the event that the offender's conduct while participating in a Community Work Project is unsatisfactory, the court may upon petition filed by the Prosecuting Attorney schedule a hearing to determine if the offender should be allowed to continue to participate in the Community Work Project. This hearing shall follow the same format and accord the offender the same safeguards as the revocation procedure as outlined in Arkansas Code 5-4-309. The burden of proof necessary for revocation of a sentence under this Act shall be a preponderance of the evidence that the offender's conduct has not been satisfactory while participating in a Community Work Project. If the court determined that the offender's conduct has not been satisfactory, the court shall remand the offender to the Arkansas Department of Correction if the offense was a felony or, in the case of a misdemeanor, to the sheriff of the county wherein the offense was committed, to serve all or a part of the remaining portion of the offender's original sentence. The offender shall be entitled to all good time and parole eligibility considerations as provided for by law.

SECTION 4. Nothing in this Act shall grant any offender the right to be sentenced under these provisions as a matter of right.

SECTION 5. 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 6. This Act is supplemental to other alternative sentencing laws and nothing in this Act shall repeal any provision of any law providing for alternative sentencing nor shall this Act repeal any act passed during the 1989 Regular Session of the General Assembly relating to alternative sentencing.

APPROVED: March 27, 1989

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