

Act 613 of the 1989 Regular Session.

Act 613

HB1452

By: Representative D. Wood

"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. 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 utilizing 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 one (1) day 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, second or subsequent driving while intoxicated offenses, negligent homicide, or the delivery, possession with intent to deliver, or manufacture of any controlled substance in violation of the Arkansas Drug Abuse Control Act, Arkansas Code 20-64-301 et seq.

SECTION 2. 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 court 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 either incarcerated in a county detention facility or, at the discretion of the court, reside at his or her principal residence under the supervision of a probation officer 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 under probation, or the Prosecuting Attorney of that county and the court shall 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 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 3. The Arkansas Adult Probation Commission shall promulgate necessary rules and regulations to be followed by governmental entities in the supervision of eligible offenders utilized under the provisions of this Act.

SECTION 4. All governmental agencies and units utilizing eligible offenders in Community Work Projects shall be immune from liability for damages and no tort action shall lie against any governmental agency or unit because of the acts of eligible offenders utilized under the provisions of this Act.

SECTION 5. Nothing in this Act shall grant any offender the right to be sentenced under these provisions as a matter of right.

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 All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 8. Emergency. It is hereby found and determined by the General Assembly that there continues to be a serious overcrowding in the Department of Correction facilities and that overcrowding is likely to continue unless appropriate action is taken immediately; that this Act is designed to establish a procedure for alleviating this problem and should be given effect immediately. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 16, 1989

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