

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Senator Bell**
5 **By: Representative Beatty**

A Bill

ACT 1170 OF 1995
SENATE BILL 773

For An Act To Be Entitled

8 "AN ACT TO CLARIFY CERTAIN PROVISIONS OF THE COMMUNITY
9 PUNISHMENT ACT; TRANSFER PROCEDURES BETWEEN THE DEPARTMENT
10 OF COMMUNITY PUNISHMENT AND THE DEPARTMENT OF CORRECTION;
11 AND CERTAIN PROVISIONS OF THE SENTENCING STANDARDS
12 PROCEDURES; AND FOR OTHER PURPOSES."

Subtitle

14 "TO CLARIFY PROVISION OF THE COMMUNITY
15 PUNISHMENT ACT; TRANSFER PROCEDURES
16 BETWEEN DEPARTMENT OF COMMUNITY
17 PUNISHMENT AND DEPARTMENT OF CORRECTION;
18 AND PROVISIONS OF SENTENCING STANDARDS
19 PROCEDURES."

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

24 SECTION 1. Arkansas Code 16-93-1206(a)(3) is amended to read as
25 follows:

26 "(3)(A) Commit the eligible offender to the custody of the Department
27 of Correction pursuant to this subchapter for judicial transfer to the
28 Department of Community Punishment subject to the following:

29 (i) That the sentence imposed provides that the offender shall
30 serve no more than two (2) years of confinement, with credit for meritorious
31 good time, with initial placement in a Department of Community Punishment
32 facility; and

33 (ii) That the initial placement in the Department of Community
34 Punishment is conditioned upon the offender_s continuing eligibility for
35 Community Punishment placement and the offender's compliance with all
36 applicable rules and regulations established by the Board of Correction and

1 Community Punishment for community punishment programs.

2 (B) Post prison supervision shall accompany and follow programming
3 when appropriate."

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5 SECTION 2. Arkansas Code 16-93-1208(a) is amended to read as follows:

6 "(a) (1) (A) Upon commitment of an eligible offender to the Department of
7 Correction, the department will transfer the eligible offender to a community
8 punishment program, when he reaches his transfer date, in accordance with the
9 rules and regulations promulgated by the Board of Correction and Community
10 Punishment and conditions set by the Post Prison Transfer Board.

11 (B) Legal custody of inmates transferred to the Department of
12 Community Punishment shall remain with the Department of Correction unless
13 altered by court order.

14 (2) When a sentence is given which is outside the presumptive range
15 set in the sentencing standards and which is not accompanied by written
16 reasons for the departure, an offender may be transferred to community
17 punishment or considered for any discretionary release applicable under the
18 law as if he had received the presumptive sentence and the transfer or
19 releasing authority may review, grant, or deny transfer or release based on
20 any eligibility established by the presumptive sentence term. This provision
21 shall only apply to a conviction for the most serious offense in a particular
22 case. In the event that such a conviction is vacated, any concurrent
23 conviction in the same case need not have a written departure.

24 (3) Persons eligible for release from incarceration on parole may
25 be placed in community punishment programming while under parole supervision
26 upon the recommendation of such condition by the releasing authority."

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28 SECTION 3. Arkansas Code 16-93-1301(c) (2) is amended to read as
29 follows:

30 "(2) (A) (i) Offenders convicted of a target offense under the Community
31 Punishment Act, § 16-93-1201 et seq., may be committed to the Department of
32 Correction and judicially transferred to the Department of Community
33 Punishment by specific provision in the commitment that the trial court orders
34 such a transfer.

35 (ii) A copy of such commitment shall be immediately forwarded

1 to the Department of Correction and to the Department of Community Punishment.

2 (iii) in the event that an offender is sentenced to the
3 Department of Correction without judicial transfer on one sentence and
4 concurrently sentenced to the Department of Correction with judicial transfer
5 on another sentence, the offender shall remain in the Department of Correction
6 and the sentence with judicial transfer may be discharged in the same manner
7 as those offenders transferred back to the DOC.

8 (B) The Department of Community Punishment shall take over supervision
9 of the offender in accordance with the order of the court.

10 (C) The Department of Community Punishment shall provide for the
11 appropriate disposition of the offender as expeditiously as practicable under
12 rules and regulations developed by the Board of Correction and Community
13 Punishment.

14 (D) The offender shall not be transported to the Department of
15 Correction on the initial placement in a Department of Community Punishment
16 facility pursuant to a judicial transfer.

17 (E) An offender who is transferred back to the Department of Correction
18 for disciplinary reasons may be considered for transfer to community
19 punishment supervision after earning good time credit equal to one half of the
20 remainder of his sentence.

21 (F) An offender who is transferred back to the Department of Correction
22 for administrative reasons may be considered for transfer to community
23 punishment supervision after earning good time credit equal to one half of his
24 sentence."

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26 SECTION 4. Arkansas Code 16-93-1304 is amended to read as follows:

27 "16-93-1304. Revocation of transfer.

28 In the event a person transferred under the provision of this subchapter
29 violates the terms or conditions of his transfer, a hearing shall follow all
30 applicable legal requirements and shall be subject to any additional policies,
31 rules, and regulations set by the Post Prison Transfer Board. In the event a
32 person transferred under the provision of this subchapter is found to be or
33 becomes ineligible for transfer into a Community Punishment facility, he shall
34 be transported to the Department of Correction to serve the remainder of his
35 sentence. Notice of the ineligibility and the reasons therefor shall be

1 provided to the offender and a hearing may be requested before the Post Prison
2 Transfer Board if the offender contests the factual basis of the
3 ineligibility, otherwise the PPTB may administratively approve the transfer to
4 the DOC. An offender who is judicially transferred to a Department of
5 Community Punishment facility and subsequently transferred back to the
6 Department of Correction by the Post Prison Transfer Board for disciplinary or
7 administrative reasons may become eligible for any further transfer under
8 section 1301(c)(2)(E) and (F)."

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10 SECTION 5. Arkansas Code 12-27-127(b)(3)(A) is amended to read as
11 follows:

12 "(3)(A) An inmate may be administratively transferred back to the
13 Department of Correction from the Department of Community Punishment by the
14 Post Prison Transfer Board following a hearing in which the inmate is found
15 ineligible for placement in a Department of Community Punishment facility as
16 he fails to meet the criteria and/or standards established by law or policy
17 adopted by the Board of Correction and Community Punishment or has been found
18 guilty of a violation of the rules and regulations of the facility."

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20 SECTION 6. Arkansas Code 16-90-802(d) is amended by inserting an
21 additional paragraph at the end thereof to read as follows:

22 "(8) Pursuant to its duties outlined in this section, the Arkansas
23 Sentencing Commission shall be a criminal justice agency as defined in
24 A.C.A. 12-12-1001(6) as its powers and duties include determining transfer
25 eligibility; gathering, analyzing and disseminating criminal history
26 information as it relates to sentencing practices, dispositions, and release
27 criteria; and determining the appropriate use of correctional and
28 rehabilitative resources of the state."

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30 SECTION 7. Arkansas Code 16-90-803(a)(2) is amended to read as follows:

31 "(2) The presumptive sentence shall be determined, but may be departed
32 from pursuant to the procedures outlined in 16-90-804. In a case with
33 multiple counts, the presumptive sentence shall be determined only on the most
34 serious offense if the sentences are to run concurrently. If run
35 consecutively, the presumptive sentence should be determined on each count."

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2 SECTION 8. Arkansas Code 16-90-804(a)(2) is amended to read as follows:

3 "(2) For the trial court to depart beyond the five percent (5%) range
4 below or above the presumptive sentence, written justification shall be given
5 for the most serious offense if the sentences are run concurrently or on each
6 offense if the sentences are run consecutively, specifying the reasons for
7 such departure. Downward departures from duration presumptions need not be
8 given if there is a lower dispositional recommendation, i.e. departures
9 reasons need not be given for a lower prison sentence than the presumptive
10 prison sentence if alternative sanctions are also included as a presumptive
11 sentence."

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13 SECTION 9. Arkansas Code 16-90-804(c) is amended to read as follows:

14 "(c) When a sentence is imposed after the effective date of these
15 standards which is outside the presumptive range and which is not accompanied
16 by written reasons for the departure, an offender shall be considered for any
17 discretionary release applicable under the law as if he had received the
18 presumptive sentence and the transfer or releasing authority may review,
19 grant, or deny transfer or release based on any eligibility established by the
20 presumptive sentence term. This provision shall only apply to a conviction for
21 the most serious offense in a particular case. In the event that such a
22 conviction is vacated, any concurrent conviction in the same case need not
23 have a written departure."

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25 SECTION 10. All provisions of this act of a general and permanent
26 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
27 Code Revision Commission shall incorporate the same in the Code.

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29 SECTION 11. If any provision of this act or the application thereof to
30 any person or circumstance is held invalid, such invalidity shall not affect
31 other provisions or applications of the act which can be given effect without
32 the invalid provision or application, and to this end the provisions of this
33 act are declared to be severable.

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35 SECTION 12. All laws and parts of laws in conflict with this act are

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