

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995

A Bill

SENATE BILL 773

4 By: Senator Bell
5 By: Representative Beatty

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

15 "TO CLARIFY PROVISION OF THE COMMUNITY
16 PUNISHMENT ACT; TRANSFER PROCEDURES
17 BETWEEN DEPARTMENT OF COMMUNITY
18 PUNISHMENT AND DEPARTMENT OF CORRECTION;
19 AND PROVISIONS OF SENTENCING STANDARDS
20 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
30 shall serve no more than two (2) years of confinement, with credit for
31 meritorious good time, with initial placement in a Department of Community
32 Punishment facility; and

33 (ii) That the initial placement in the Department of
34 Community Punishment is conditioned upon the offender_s continuing
35 eligibility for Community Punishment placement and the offender's compliance

1 with all applicable rules and regulations established by the Board of
2 Correction and Community Punishment for community punishment programs.

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

5

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

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

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

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

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

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

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

1 orders such a transfer.

2 (ii) A copy of such commitment shall be immediately forwarded
3 to the Department of Correction and to the Department of Community
4 Punishment. (iii) in the event that an offender is sentenced

5 to the Department of Correction without judicial transfer on one sentence and
6 concurrently sentenced to the Department of Correction with judicial transfer
7 on another sentence, the offender shall remain in the Department of
8 Correction and the sentence with judicial transfer may be discharged in the
9 same manner as those offenders transferred back to the DOC.

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

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

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

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

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

27

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

29 "16-93-1304. Revocation of transfer.

30 In the event a person transferred under the provision of this
31 subchapter violates the terms or conditions of his transfer, a hearing shall
32 follow all applicable legal requirements and shall be subject to any
33 additional policies, rules, and regulations set by the Post Prison Transfer
34 Board. In the event a person transferred under the provision of this
35 subchapter is found to be or becomes ineligible for transfer into a Community

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

11

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

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

21

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

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

31

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

34 "(2) The presumptive sentence shall be determined, but may be departed
35 from pursuant to the procedures outlined in 16-90-804. In a case with

1 multiple counts, the presumptive sentence shall be determined only on the
2 most serious offense if the sentences are to run concurrently. If run
3 consecutively, the presumptive sentence should be determined on each count."
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5 SECTION 8. Arkansas Code 16-90-804(a)(2) is amended to read as
6 follows:

7 "(2) For the trial court to depart beyond the five percent (5%) range
8 below or above the presumptive sentence, written justification shall be given
9 for the most serious offense if the sentences are run concurrently or on each
10 offense if the sentences are run consecutively, specifying the reasons for
11 such departure. Downward departures from duration presumptions need not be
12 given if there is a lower dispositional recommendation, i.e. departures
13 reasons need not be given for a lower prison sentence than the presumptive
14 prison sentence if alternative sanctions are also included as a presumptive
15 sentence."
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17 SECTION 9. Arkansas Code 16-90-804(c) is amended to read as follows:

18 "(c) When a sentence is imposed after the effective date of these
19 standards which is outside the presumptive range and which is not accompanied
20 by written reasons for the departure, an offender shall be considered for any
21 discretionary release applicable under the law as if he had received the
22 presumptive sentence and the transfer or releasing authority may review,
23 grant, or deny transfer or release based on any eligibility established by
24 the presumptive sentence term. This provision shall only apply to a
25 conviction for the most serious offense in a particular case. In the event
26 that such a conviction is vacated, any concurrent conviction in the same case
27 need not have a written departure."
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29 SECTION 10. All provisions of this act of a general and permanent
30 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
31 Code Revision Commission shall incorporate the same in the Code.
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33 SECTION 11. If any provision of this act or the application thereof to
34 any person or circumstance is held invalid, such invalidity shall not affect
35 other provisions or applications of the act which can be given effect without

1 the invalid provision or application, and to this end the provisions of this
2 act are declared to be severable.

3

4 SECTION 12. All laws and parts of laws in conflict with this act are
5 hereby repealed.

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7 SECTION 13. EMERGENCY. It is hereby found and determined by the
8 General Assembly that confusion exists regarding the status of ineligible
9 offenders judicially transferred to Department of Community Punishment
10 facilities; that there is an immediate need to clarify the law applicable to
11 transferring ineligible offenders back to the Department of Correction; and
12 that it is in the best interest of the courts which already have crowded
13 documents to immediately reduce the reporting requirements for departure
14 sentences. Therefore, an emergency is hereby declared to exist and this act
15 being necessary for the preservation of the public peace, health and safety
16 shall be in full force and effect from and after its passage and approval.

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