

1 Stricken language would be deleted from and underlined language would be added to present law.

2  
3 State of Arkansas

4 \_\_\_\_\_ General Assembly A BILL

5 Regular Session Senate Bill # \_\_\_\_\_

6  
7 By Senators: \_\_\_\_\_

8  
9 By Representatives: \_\_\_\_\_

10 Below is an *excerpt* of the proposed draft legislation that Arkansans Organizing for Justice (AOJ)  
11 and their sister movements intend to present to a possible sponsor in the Arkansas General  
12 Assembly. AOJ makes this proposal to revise ALL Arkansas Codes that includes lifers and other  
13 inmates serving long term sentences.  
14  
15 The intent of the legislation is to provide a rehabilitation (parole) hearing to inmates who  
16 currently do not have that option (or those with long term sentences) and generally have to rely  
17 on executive clemency for relief. In most cases, clemency does not work especially when it is a  
18 public appointed figure that makes the final determination. Politicians will protect their elected  
19 position rather than release someone from prison, no matter how deserving they may be. This  
20 is what AOJ hopes to change.

21 For An Act To Be Entitled

22 ARKANSAS REHABILITATION ACT FOR INCARCERATED INDIVIDUALS

23  
24 Subtitle

25 TO ADDRESS PRISON OVERCROWDING AND THE RISING COST TO TAXPAYERS BY  
26 WAREHOUSING INMATES INTO OLD AGE WHILE MAINTAINING PUBLIC SAFETY

27  
28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

29  
30 SECTION 1. Do Not codify. Legislative Intent.

31 The intent of this Act is to implement release procedures for persons who have  
32 been incarcerated for an extended period of time; who have demonstrated rehabilitation  
33 in a greater manner than those currently being released; and whose amount of time  
34 served has achieved the ends of justice for the crime committed. Many prisoners have  
35 been confined for two, three, and four decades without a meaningful opportunity for  
36 release and most have maintained good institutional records. Statistics have shown that

1 long-termers incarcerated for decades have the lowest recidivism rate of any group of  
2 prisoners, according to the Department of Justice in 1994, and a 2004 analysis by the  
3 Sentencing Project. The lowest re-arrest rate was individuals who have been in prison for  
4 homicide.

5 It is the intent of this Act to reduce the prison population and the prison budget  
6 which exceeds a third of a billion dollars, while maintaining public safety. No prisoner will  
7 be released without a hearing, without a risk needs assessment review, and without a  
8 reasonable probability that the prisoner is no longer a threat to the community or  
9 himself/herself.

10 These changes are consistent with the goals of Act 570 and will serve to effectuate  
11 the reduction of the prison population over the next two decades. Without these changes,  
12 Act 570 may be attributed to nothing more than causing temporal relief to the Arkansas  
13 prison population. Currently, a large number of prisoners are serving a minimum of fifteen  
14 (15) years from their projected T.E. date. Housing these offenders over the next decade,  
15 without some form of board control/release, will undermine the main purpose of Act 570  
16 and will result in an inflated prison population. Without a contingency plan, future  
17 legislation is inevitable and may include the need for additional bed space.

18 Nothing in the sections as amended by this Act shall inhibit the executive powers of  
19 clemency or any other power of the Governor of the State of Arkansas.

20 It is the intent of this Act to retroactively affect each person under the sections  
21 amended herein.

22  
23 SECTION 2. Arkansas Code §16-93-601(b) and (c) concerning felonies committed prior to  
24 April 1, 1977, is amended to read as follows:

25  
26 (b) Life Imprisonment. (1) An individual sentenced to life imprisonment prior to March 1,  
27 1968, and any individual sentenced to life imprisonment after February 12, 1969, and  
28 before April 1, 1977, is not eligible for release on parole unless the sentence is commuted  
29 to a term of years by executive clemency or if the individual receives a change in the terms  
30 of confinement by the parole board under the provisions of §16-93-701 and as listed under  
31 (b)(1)(A) and (b)(1)(B) of this section. When the life sentence is commuted to a term of  
32 years, the individual is eligible for release on parole after having served one-third (1/3) of  
33 the time to which the life sentence is commuted, with credit for good-time allowances.

34  
35 (A) Any person sentenced to life imprisonment as defined in (b)(1) of this section,  
36 and who has never been convicted of a previous violent felony as defined by §5-4-

1 501(d)(2) or comparable violent felony at the time the crime was committed, he or she  
2 shall be eligible for a rehabilitation hearing that may cause a change in the terms of  
3 confinement under the provisions of §16-93-701 after having served a minimum of twenty  
4 (20) years of his or her sentence.

5  
6 (B) Any person sentenced to life imprisonment as defined in (b)(1) of this section  
7 and has been convicted of a previous violent felony as defined by §5-4-501(d)(2) or  
8 comparable violent felony at the time the crime was committed, he or she is not eligible  
9 for a rehabilitation hearing under the provisions of §16-93-701 until having served a term  
10 of twenty-five (25) years of his or her sentence.

11  
12 (C) An individual sentenced to life imprisonment without parole is not eligible for  
13 release on parole, but may be pardoned or have his or her sentence commuted by the  
14 Governor, as provided by law, or may receive a change in the terms of confinement by the  
15 parole board under the provisions of §16-93-701 and as follows:

16  
17 (i) If the individual sentenced to life without parole has never been convicted of  
18 a previous violent felony as defined by §5-4-501(d)(2) or comparable violent felony at the  
19 time the crime was committed, he or she shall be eligible for a rehabilitation hearing that  
20 may cause a change in the terms of confinement under the provisions of §16-93-701 after  
21 having served a minimum term of twenty-five (25) years of his or her sentence.

22  
23 (ii) If the individual sentenced to life without parole has been convicted of a  
24 previous violent felony as defined by §5-4-501(d)(2) or comparable violent felony at the  
25 time the crime was committed, he or she is not eligible for a rehabilitation hearing under  
26 the provisions of §16-93-701 until having served a minimum of thirty (30) years of his or  
27 her sentence.

28  
29 (2) An individual sentenced to a life sentence on or after March 1, 1968 and prior to  
30 February 12, 1969 is eligible for release on parole after he or she serves fifteen (15) years  
31 of the sentence, with credit for good time allowances not to exceed five (5) years.

32  
33 (C) SENTENCE OF YEARS. An individual sentenced to a term of years in the state  
34 penitentiary after February 11, 1976, and before April 1, 1977, is eligible for release on  
35 parole after he or she serves the following terms:

1 (1) An individual sentenced to a term of years for other than a Class Y felony who is  
2 confined in the state penitentiary for the second time is eligible for release on parole after  
3 he or she serves one-third (1/3) of the time for which sentenced, with credit for good-time  
4 allowances, or one-third (1/3) of the time to which sentence is commuted by executive  
5 clemency, with credit for good-time allowances. However, a judge may require one-half  
6 (1/2) of the sentence as imposed, or one-half (1/2) of the sentence as commuted by  
7 executive clemency, to be served, with credit for good-time allowances.

8  
9 (2) An individual sentenced to a term of years who is confined in the state  
10 penitentiary and who pleads guilty to or is convicted of a Class Y felony or who has  
11 previously been confined in the state penitentiary two (2) or more times is eligible for  
12 release on parole after he or she serves one-half (1/2) of the time to which the sentence is  
13 commuted by executive clemency, with credit for good-time allowances.

14  
15 (3) Notwithstanding any other provisions governing parole eligibility, and regardless of the  
16 date sentenced, an individual sentenced to a long term of years, unless eligible for parole  
17 at an earlier date, shall be eligible for a rehabilitation hearing under the provisions of §16-  
18 93-701 as follows:

19  
20 (A) If the individual has never been convicted of a previous violent felony as defined  
21 by §5-4-501(d)(2) or comparable violent felony at the time the crime was committed, he or  
22 she shall be eligible for a rehabilitation hearing after serving a minimum of fifteen (15)  
23 years of his or her sentence; or

24  
25 (B) If the individual has been convicted of a previous violent felony as defined by §5-  
26 4-501(d)(2) or comparable violent felony at the time the crime was committed, he or she is  
27 not eligible for a rehabilitation hearing until he or she serves a minimum of twenty (20)  
28 years of his or her sentence.

29  
30 [SECTIONS 3-8 have been omitted for purposes of this excerpt.]

31  
32 SECTION 9 Arkansas Code §16-93-701 is amended to read as follows: §16-93-701  
33 Authority to Grant and Parameters; General Procedures Governing Rehabilitation Hearings.

34  
35 (a)(1) The parole board may release on parole any individual eligible under the provisions  
36 of §16-93-601, §16-93-604, §16-93-607, §16-93-614 or §16-93-618 who is confined in any

1 correctional institution administered by the Department of Correction, when in its opinion  
2 there is a reasonable probability that the prisoner can be released without detriment to  
3 the community or himself or herself.

4  
5 (2) All paroles shall issue upon order, duly adopted, of the board.

6  
7 (b)(1) At any time after completion of a minimum period of confinement of any life or life  
8 without parole sentence, or sentence to a term of imprisonment as defined under the  
9 provisions of §§16-93-601, 16-93-604, 16-93-607, 16-93-612, 16-93-614 or 16-93-618 and  
10 upon the petition of a prisoner so confined in any unit in the Department of Correction, the  
11 parole board shall have a hearing to determine if the prisoner has been rehabilitated or is  
12 likely to be rehabilitated within a reasonable period of time. This shall be the sole issue of  
13 the hearing. At the hearing the prisoner has:

14  
15 (A) The burden of proving by a preponderance of the evidence that he or she has  
16 been rehabilitated or is likely to be rehabilitated within a reasonable period of time;

17  
18 (B) The right to introduce any document, witness, or other evidence in his or her  
19 behalf to demonstrate rehabilitation; and

20  
21 (C) The privilege to be represented by counsel, but only at the prisoner's expense.

22  
23 (2) If, upon hearing all the evidence, the board, upon a majority vote, finds that the  
24 prisoner has been rehabilitated or is capable of rehabilitation in a reasonable period of  
25 time, and that the terms of the prisoner's confinement should be changed, the board shall  
26 enter an order to that effect and the order shall convert the terms of the prisoner's  
27 confinement to any sentence that causes immediate eligibility for parole/transfer and/or  
28 may set a release date within the immediate future or any reasonable period of time,  
29 otherwise, the board shall deny the relief sought in the petition.

30 (3)(A) If the parole board denies a petition for a change in the terms of confinement,  
31 the board may delay any subsequent hearing for a minimum period of two (2) years, but  
32 not more than five (5) years, from the date the petition is denied.

33  
34 (B) The board shall not delay any subsequent hearing for more than two (2) years  
35 from the date a petition is denied unless the board finds that it is not reasonable to expect  
36 that the prisoner would be granted a change in the terms of confinement before the date

1 of the subsequent hearing.  
2

3 C) If the board delays the hearing for more than two (2) years from the date a  
4 petition is denied, the prisoner may submit a petition for an interim hearing to the parole  
5 board not earlier than two (2) years from the date the petition was denied, and at intervals  
6 of not less than two (2) years thereafter. If the board finds, based upon the petition for an  
7 interim hearing, that there is reasonable cause to believe that the prisoner may be granted  
8 a change in the terms of confinement, the board shall conduct a hearing as soon as it is  
9 reasonably convenient.

10  
11 (D) Any time the board denies a petition for a change in the terms of confinement  
12 or denies a petition for an interim hearing, the board shall issue a final order accompanied  
13 by findings of facts and conclusions of law. The findings shall consist of a concise  
14 statement of the underlying facts supporting the findings as to each contested issue to  
15 support the board's order and shall include any findings by the board of any risk-needs  
16 assessment for programs to be completed by the inmate in order to achieve rehabilitation.  
17 The order shall include findings necessary to deny the prisoner a change in the terms of  
18 confinement for a period of not less than two (2) years, but not more than five (5) years.

19  
20 (E) The prisoner shall receive a copy of the final order denying his or her petition for  
21 an interim hearing necessary for the prisoner to comply with the findings of the board and  
22 thereby demonstrate rehabilitation during any subsequent hearing(s).

23  
24 (F) The parole board shall promulgate rules and procedures to determine the date  
25 of subsequent hearings as well as the rules and procedures that will allow the prisoner to  
26 participate in programs that are otherwise denied him or her due to long term sentences.  
27 Such programs that are normally imposed by the board prior to release of a prisoner (i.e.  
28 Vo-Tech, Substance Abuse Treatment Program (S.A.T.P.), etc.)

29 (b)(c)(1) Before ordering the release of any prisoner, the prisoner shall be interviewed by  
30 the board or a panel designated by the board and, for all parole decisions after January 1,  
31 2012, the board shall conduct a risk-needs assessment review of all parole applicants.

32  
33 (2)(A) The parole shall be ordered only for the best interest of society and not as an  
34 award for clemency.  
35

1 (B) The parole shall not be considered as a reduction of sentence, commutation, or  
2 a pardon.

3  
4 (3) A prisoner shall be placed on parole only when the board believes that he or she is  
5 able and willing to fulfill the obligations of a law-abiding citizen.

6  
7 (4) Every prisoner, while on parole, shall remain in the legal custody of the institution  
8 from which he or she was released, but shall be subject to the orders of the board.

9  
10 (5) All paroles shall issue upon order, duly adopted, of the board.

11  
12 (6) Once the sentence has been converted, all earned good time credits shall be  
13 calculated in accordance to the law in effect at the time of the offense as defined under  
14 §16-93-612.

15  
16 (7) Notwithstanding any laws in conflict with this section, the board shall promulgate  
17 rules and procedures to determine conditions for release of offenders in (b)(1) of this  
18 section.

19  
20 (8) For sentences being converted by the parole board, consecutive sentences by one  
21 (1) or more courts or for one (1) or more counts are to be considered as a single  
22 commitment and/or cumulative sentence.

23  
24 (9) The parole board may order the release of any individual under the provisions of  
25 this section who is confined in any correctional institution administered by the Department  
26 of Corrections and subject to any other rules promulgated by the board.

27  
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