

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

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

As Engrossed: S4/6/21  
**A Bill**

SENATE BILL 622

By: Senators Hickey, A. Clark  
By: Representatives Shepherd, Dalby

### **For An Act To Be Entitled**

AN ACT DELAYING RELEASE FROM PRISON FOR CERTAIN OFFENDERS UNTIL THE OFFENDER HAS SERVED AT LEAST EIGHTY PERCENT (80%) OF HIS OR HER SENTENCE; CREATING PENALTIES FOR FALSE REPORTING TO LAW ENFORCEMENT; CREATING A REGISTRY; AND FOR OTHER PURPOSES.

### **Subtitle**

DELAYING RELEASE FROM PRISON FOR CERTAIN OFFENDERS UNTIL THE OFFENDER HAS SERVED AT LEAST EIGHTY PERCENT (80%) OF HIS OR HER SENTENCE; CREATING PENALTIES FOR FALSE REPORTING TO LAW ENFORCEMENT; AND CREATING A REGISTRY.

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

SECTION 1. Arkansas Code Title 5, Chapter 4, Subchapter 4, is amended to add an additional section to read as follows:

5-4-405. Delayed release for certain offenders.

(a) As used in this section:

(1) "Aggravating circumstance" means a defendant purposely selected the victim because the victim was a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics;

(2) "Delayed release" means that a person who receives a sentence of imprisonment is not eligible for parole unless the person has



served at least eighty percent (80%) of his or her sentence;

(3) "Purposely selected the victim" does not mean that a defendant's mere abstract belief or expression was hostile or contrary to the victim's being a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics; and

(4) "Serious felony involving violence" means:

(A) Murder in the first degree, § 5-10-102;

(B) Murder in the second degree, § 5-10-103;

(C) Battery in the first degree, § 5-13-201;

(D) Aggravated assault, § 5-13-204;

(E) Terroristic threatening, § 5-13-301, if a felony offense;

(F) Terroristic act, § 5-13-310;

(G) Arson, § 5-38-301;

(H) Unlawful discharge of a firearm from a vehicle, § 5-74-107; and

(I) An attempt, a solicitation, or a conspiracy to commit an offense listed in this subdivision (a)(4) if the attempt, solicitation, or conspiracy itself is a felony.

(b)(1)(A) A person who commits a serious felony involving violence is subject to delayed release if the state proves beyond a reasonable doubt that the person committed a serious felony involving violence under an aggravating circumstance.

(B) In order to seek delayed release under this section, the state shall set out the allegation in the indictment, in the information, or in a separate filing.

(2) If the finder of fact is the circuit court, the state may present evidence of an aggravating circumstance during its case-in-chief, and if the circuit court finds the person guilty and sentences the person to a term of imprisonment, the circuit court shall make the determination as to whether the state proved beyond a reasonable doubt that the person committed a serious felony involving violence under an aggravating circumstance and sentence the person accordingly.

(3)(A) If the finder of fact is a jury, the jury shall first hear all evidence relevant to the serious felony involving violence with

which the person is charged and shall retire to reach a verdict of guilt or innocence on the charge.

(B) If the person is found guilty of the serious felony involving violence, the circuit court shall then instruct the jury that the state seeks a sentence of imprisonment that would provide for delayed release.

(C) The state may then offer additional evidence and argument that one (1) or more aggravating circumstances existed, which the person may rebut with his or her own evidence and argument.

(D) The jury shall retire again and then determine a sentence and, if the sentence includes a term of imprisonment, a finding as to whether the person is subject to delayed release.

(c) This section does not:

(1) Interfere with the exercise of rights protected by the United States Constitution or the Arkansas Constitution, including without limitation the right of clergy to express religious beliefs during a religious service or ceremony;

(2) Serve as a basis to create a protected classification or prohibit discrimination under the Intrastate Commerce Improvement Act, § 14-1-401 et seq.;

(3) Expand or contract the protections afforded by the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq.

(d) This section shall not be altered, broadened, or narrowed through federal or state executive action.

SECTION 2. Arkansas Code § 5-53-131 is amended to read as follows:

5-53-131. Frivolous, groundless, or malicious prosecutions.

(a) Any officer or any person who knowingly brings or aids and encourages another person to bring a frivolous, groundless, or malicious prosecution upon conviction is guilty of a Class A misdemeanor.

(b) Any officer or any person who knowingly brings or aids or encourages another person to bring a frivolous, groundless, or malicious prosecution seeking to subject a person to delayed release under § 5-4-405 upon conviction is guilty of a Class C felony.

SECTION 3. Arkansas Code § 5-54-122 is amended to read as follows:

5-54-122. Filing false report with law enforcement agency.

(a) As used in this section, "report" means any communication, either written or oral, sworn or unsworn.

(b) A person commits the offense of filing a false report if he or she files a report with any law enforcement agency or prosecuting attorney's office of any alleged criminal wrongdoing on the part of another person knowing that the report is false.

(c)(1) Filing a false report is a Class D felony if:

(A) The alleged criminal wrongdoing is a capital offense, Class Y felony, Class A felony, or Class B felony;

(B) The law enforcement agency or prosecuting attorney's office to whom the false report is made has expended in excess of five hundred dollars (\$500) in order to investigate the false report, including the costs of labor;

(C) Physical injury results to any person as a result of the false report;

(D) The false report is made in an effort by the person filing the false report to conceal his or her own criminal activity; ~~or~~

(E) The false report results in another person being arrested; or

(F) The false report alleges another person purposely selected the victim of a crime because the victim was a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics, for the purpose of delayed release under § 5-4-405.

(2) Otherwise, filing a false report is a Class A misdemeanor.

SECTION 4. Arkansas Code Title 12, Chapter 12, Subchapter 2, is amended to add an additional section to read as follows:

12-12-220. Registry of certain sentencing orders.

(a) The Arkansas Crime Information Center shall maintain a registry of all sentencing orders that include delayed release under § 5-4-405.

(b) Upon the entry of a sentencing order requiring delayed release under § 5-4-405, a prosecuting attorney shall furnish a copy to the center in a manner prescribed by the Supervisory Board for the Arkansas Crime Information Center.

(c) Data collected under this section shall be disseminated upon request to a federal, state, or local law enforcement agency, a political subdivision of the state, a state agency, the Bureau of Legislative Research, or the Attorney General.

SECTION 5. Arkansas Code § 16-93-612, concerning the date when a felony offense was committed and which parole eligibility statutes apply, is amended to add an additional subsection to read as follows:

(g) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, if the felony is an offense that is subject to delayed release under § 5-4-405 and was committed on or after the effective date of this act, the person shall not be eligible for parole or community correction transfer until the person serves a minimum of eighty percent (80%) of the term of imprisonment to which the person is sentenced.

SECTION 6. Arkansas Code § 16-93-613 is amended to read as follows:

16-93-613. Parole eligibility – Class Y, Class A, or Class B felonies.

(a) A Except for those persons subject to delayed release under § 5-4-405, a person who commits a Class Y felony, Class A felony, or Class B felony, except those drug offenses addressed in § 16-93-618 or those Class Y felonies addressed in § 16-93-614 or § 16-93-618, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have his or her sentence commuted by the Governor, as provided by law; and

(2)(A) An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency.

(B) Upon commutation, the inmate is eligible for release on parole as provided in this subchapter.

(b) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts are to be considered as a single commitment reflecting the cumulative sentence to be served.

(c) Except as provided for under § 16-93-621, for an offense committed before, on, or after March 20, 2017, a person who was a minor at the time of

committing an offense listed under subsection (a) of this section is eligible for release on parole under this section.

SECTION 7. The introductory language of Arkansas Code § 16-93-618(a)(1), concerning the parole eligibility of persons who commit seventy-percent offenses, is amended to read as follows:

(a)(1) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, and subject to delayed release under § 5-4-405, a person who is found guilty of or pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(I) of this section shall not be eligible for parole or community correction transfer, except as provided in subdivision (a)(3) or subsection (c) of this section, until the person serves seventy percent (70%) of the term of imprisonment to which the person is sentenced, including a sentence prescribed under § 5-4-501:

*/s/Hickey*