

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: S4/6/21

# A Bill

SENATE BILL 622

5 By: Senators Hickey, A. Clark  
6 By: Representatives Shepherd, Dalby  
7

## For An Act To Be Entitled

9 AN ACT DELAYING RELEASE FROM PRISON FOR CERTAIN  
10 OFFENDERS UNTIL THE OFFENDER HAS SERVED AT LEAST  
11 EIGHTY PERCENT (80%) OF HIS OR HER SENTENCE; CREATING  
12 PENALTIES FOR FALSE REPORTING TO LAW ENFORCEMENT;  
13 CREATING A REGISTRY; AND FOR OTHER PURPOSES.  
14  
15

## Subtitle

16 DELAYING RELEASE FROM PRISON FOR CERTAIN  
17 OFFENDERS UNTIL THE OFFENDER HAS SERVED  
18 AT LEAST EIGHTY PERCENT (80%) OF HIS OR  
19 HER SENTENCE; CREATING PENALTIES FOR  
20 FALSE REPORTING TO LAW ENFORCEMENT; AND  
21 CREATING A REGISTRY.  
22  
23  
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
26

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

29 5-4-405. Delayed release for certain offenders.

30 (a) As used in this section:

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

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



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

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

7 (4) "Serious felony involving violence" means:

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

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

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

11 (D) Aggravated assault, § 5-13-204;

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

14 (F) Terroristic act, § 5-13-310;

15 (G) Arson, § 5-38-301;

16 (H) Unlawful discharge of a firearm from a vehicle, § 5-  
17 74-107; and

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

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

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

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

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

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

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

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

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

13 (c) This section does not:

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

18 (2) Serve as a basis to create a protected classification or  
19 prohibit discrimination under the Intrastate Commerce Improvement Act, § 14-  
20 1-401 et seq.;

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

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

25  
26 SECTION 2. Arkansas Code § 5-53-131 is amended to read as follows:

27 5-53-131. Frivolous, groundless, or malicious prosecutions.

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

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

35  
36 SECTION 3. Arkansas Code § 5-54-122 is amended to read as follows:

1 5-54-122. Filing false report with law enforcement agency.

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

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

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

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

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

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

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

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

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

26 (2) Otherwise, filing a false report is a Class A misdemeanor.  
27

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

30 12-12-220. Registry of certain sentencing orders.

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

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

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

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

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

15  
16           SECTION 6. Arkansas Code § 16-93-613 is amended to read as follows:

17           16-93-613. Parole eligibility – Class Y, Class A, or Class B felonies.

18           (a) A Except for those persons subject to delayed release under § 5-4-  
19 405, a person who commits a Class Y felony, Class A felony, or Class B  
20 felony, except those drug offenses addressed in § 16-93-618 or those Class Y  
21 felonies addressed in § 16-93-614 or § 16-93-618, and who shall be convicted  
22 and incarcerated for that felony, shall be eligible for release on parole as  
23 follows:

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

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

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

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

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

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

3  
4 SECTION 7. The introductory language of Arkansas Code § 16-93-  
5 618(a)(1), concerning the parole eligibility of persons who commit seventy-  
6 percent offenses, is amended to read as follows:

7 (a)(1) Notwithstanding any law allowing the award of meritorious good  
8 time or any other law to the contrary, and subject to delayed release under §  
9 5-4-405, a person who is found guilty of or pleads guilty or nolo contendere  
10 to subdivisions (a)(1)(A)-(I) of this section shall not be eligible for  
11 parole or community correction transfer, except as provided in subdivision  
12 (a)(3) or subsection (c) of this section, until the person serves seventy  
13 percent (70%) of the term of imprisonment to which the person is sentenced,  
14 including a sentence prescribed under § 5-4-501:

15  
16 /s/Hickey

17  
18  
19 **APPROVED: 4/13/21**  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36