

ARKANSAS REGISTER

Transmittal Sheet



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For Office

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Name of Agency POST PRISON TRANSFER BOARD

Department POST PRISON TRANSFER BOARD

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CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 As Amended.


Signature

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Title

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ARK. REGISTER DIV.

8/2/02

Date

FILED

**ARKANSAS
POST PRISON
TRANSFER BOARD
POLICIES AND PROCEDURES**

Board Approved: 2/14/02 Effective Date: 8/19/02

Leroy Brownlee, Chairperson

FINAL COPY

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I. COMPOSITION OF THE BOARD

The Arkansas Post Prison Transfer Board (Board) is composed of seven members appointed by the Governor and confirmed by the Senate. Each member is appointed for a term of seven years. The Board is required to consider persons eligible for parole, release, or transfer and to determine which persons shall be placed under supervision and/or to establish the conditions under which such persons shall be released.

The Board is also responsible for reviewing all pardon and executive clemency applications and making non-binding recommendations to the Governor.

The Governor shall appoint the Chairperson of the Board. The Board shall elect, during the month of February, a Vice-Chairperson and a Secretary to serve as officers for the upcoming year. Officers shall be elected by a majority of members present and voting. If an office becomes vacant in the interim, the Board shall elect, at its next regular meeting, a member to serve in that office until the next election. A special election of officers may be called at any time at the request of a majority of the members. The duties of the officers shall be as follows:

Chairperson - The Chairperson shall preside over the meetings of the Board and shall perform other duties as required during the periods between Board meetings. Unit assignments shall be made between Full-time Board members upon notification of the Chairperson. Additionally, the Chairperson may assign the Part-time Board member to fill an assignment if necessary due to illness, vacation, or other valid reason of the full-time Board membership. Shall serve by law as a member of the Board of Correction.

Vice-Chairperson - In the temporary absence of the Chairperson, the Vice-Chairperson shall perform the duties of the Chairperson.

Secretary - In the temporary absence of the Chairperson and the Vice-Chairperson, the Secretary shall perform the duties of the Chairperson. The Secretary shall be responsible for the recording of the minutes of all Board meetings.

Board Members - Each Full-time Board member shall have the right to vote on each consideration presented. Five (5) votes are required. The Part-time Board member may vote when designated to fill an assignment as defined under duties of the Chairperson; additionally, the Part-time Board member may vote on requests for clemency and pardon.

II. QUORUM

A quorum of five members will be designated to vote on each file. A member who abstains for cause is not eligible to vote and shall not be counted in determining whether there is a quorum. It is sufficient that a motion, decision, or proposition receives a majority of the votes actually cast.

III. RECUSAL

No member of the Board should participate in the determination of any matter before the Board if he/she is closely related to the person, the person's attorney, or the victim; or if he/she has had a personal or business relationship with the person, the person's family, the person's attorney, the victim, or the victim's family which he/she knows would affect or reasonably give the appearance of affecting his/her judgment in the matter; or if he/she has served as counsel for either party in legal proceedings concerning the person; or if he/she has any other interest in the proceeding that he/she knows would affect or reasonably give the appearance of affecting his/her judgment in the matter. The responsibility for determining the appropriateness of a member's recusal under the guidelines established by this policy shall be solely upon that member. Neither the Board nor any member of the Board shall have the duty to request or the authority to compel any member to recuse. In establishing these guidelines for recusal for members of this Board, it is not the intent of the Board to create a right or basis to challenge the actions of this Board, or any member of the Board, which is not otherwise provided by the laws or Constitution of this State or the United States. In the event a Board member abstains or recuses from a vote for parole, transfer, pardon or clemency, this action is final and cannot be changed.

IV. GENERAL PROCEDURES

The Board may designate a panel for the interviewing of persons for possible parole, transfer and executive clemency. In addition to a board member, a panel may be comprised of one of the following: a hearing examiner, a designated official of the Department of Correction, a designated official of the Department of Community Correction, (or a designated official selected by the board member interviewing).

Inmates convicted of Capital Murder, Murder-1st Degree, Murder-2nd Degree, Manslaughter, Negligent Homicide, Kidnaping (Class Y), Rape, Aggravated Robbery,

Causing a Catastrophe, Engaging in a Continuing Criminal Enterprise, Simultaneous Possession of Drugs and Firearms, Sexual Abuse -1st Degree, Battery-1st Degree, or Domestic Battery-1st Degree are eligible for discretionary transfer after serving the time required, as set forth by the Arkansas Sentencing commission, with credit for good time as established by law and/or regulation.

V. ACCESS TO PERSONS AND RECORDS

All Department of Correction and Department Community Correction officials have a legal duty to grant to the members of the Board, or its properly accredited representatives, access at all reasonable times to any person over whom the Board has jurisdiction, to provide facilities for communicating with and observing such persons, to furnish the Board such reports as the Board shall require concerning the conduct and character of any person in the custody of the Department of Correction or Department of Community Correction and to provide any information deemed pertinent by the Board in determining whether a person shall be released.

Inspection of Records

Parole and Clemency Request Files - Pursuant the provisions of A.C.A. 16-93-202, the following portions of Parole and Clemency Request files be provided for inspection, upon request, by a person having a proper interest therein and whenever the interests or welfare of the person involved make inspection desirable or helpful:

- a. Cover sheet;
- b. 153 forms; and
- c. Vote sheet

VI. CONSIDERATION OF PERSONS ELIGIBLE FOR TRANSFER OR RELEASE

Persons who commit crimes on or after January 1, 1994, and are subsequently incarcerated for those felonies shall be considered for transfer to the Department of Community Correction.

Inmates convicted of Murder in the First Degree, Kidnaping, Rape, Aggravated Robbery, Causing a Catastrophe, Engaging in a Continuing Criminal Enterprise or the Manufacture or Delivery of a Schedule I or II Controlled Substance which by aggregate

weight including adulterants or diluents is greater than twenty-eight (28) grams are eligible for discretionary transfer after serving the time required, as set forth by the Arkansas Sentencing Commission, with credit for good time as established by law and/or regulation.

The procedure for review of these inmates will be the same as the procedure for persons who committed crimes prior to January 1, 1994. (See Section VII).

All other inmates (not delineated above) who commit crimes on or after January 1, 1994, will have transfer dates calculated by the Department of Correction under rules and regulations promulgated by the Board of Corrections.

If the Post Prison Transfer Board approves an inmate to be transferred to the Department of Community Correction on his/her Transfer Eligibility date, there will be no hearing unless the inmate objects to any special conditions imposed or the Board changes the decision to release the inmate. If the victim or victim(s)' next-of-kin requests input concerning release conditions, the Board will review it in writing and schedule a hearing. The Board will accept or hear input only as it relates to the inmate's release conditions. Unless otherwise determined by the majority of a quorum of the Board, an inmate incarcerated at the Varner Unit Super Max who has failed to complete the required course of action of attaining level 5 will not be granted a rehearing by the Board unless and until such level has been attained.

The Board may determine the appropriateness of the inmate for transfer by conducting a hearing before a designated panel. Once a hearing is conducted, those members voting will have only two options:

- (1) transfer the inmate to the Department of Community Correction which specific conditions (which must be within the current resources of the Department of Community Correction); or
- (2) deny transfer to the inmate until the inmate completes a course of action established by the Board that would rectify the Board's concerns. After the completion of the required course of action (which must be within the current resources of the Department of Correction), the Board will be required to transfer the inmate to the Department of Community Correction.

Should an inmate fail to complete the required course of action, it will be the responsibility of the inmate to request a rehearing before the Board. There will not be an automatic review in such cases.

The following is eligibility criteria for release (in addition to release afforded by executive clemency, discharge, court action or death) by the Board available for persons

who committed felonies prior to January 1, 1994, and are subsequently incarcerated in the Arkansas Department of Correction:

REGULAR PAROLE

A person sentenced to the Department of Correction for a Class Y, Class A or Class B felony is generally eligible for parole after serving the following:

- 1st Term - 1/3 of sentence with credit for good time
- 2nd Term or 1st term convicted of a Class Y felony - 1/2 of sentence with credit for good time.
- 3rd Term - 3/4 of sentence with credit for good time.
- 4th Term or more - not eligible for parole, but credit for good time is given.

(*NOTE: The Department of Correction counts by incarcerations in adult facilities for felony convictions.)

A person sentenced to the Department of Correction for a Class C or Class D felony is generally eligible for parole after serving 1/3 of sentence with credit for good time.

Be aware that there are other specific statutes which may alter these general rules.

VII. FACTORS CONSIDERED IN RELEASE OR DISCRETIONARY TRANSFER DECISIONS

1. Release or discretionary transfer may be granted to an eligible person by the Board when, in its opinion, there is a reasonable probability that the person can be released without detriment to the community or him/herself. Persons who commit designated Class Y felonies on or after January 1, 1994, and are convicted and incarcerated for such offenses will be subject to discretionary transfer.
2. In making its determination regarding a person's release or discretionary transfer, it is within the discretion of the Board to take into account, among other things, the following factors:
 - a. institutional adjustment in general, including the nature of any disciplinaries;
 - b. the record of previous criminal offenses (misdemeanors and felonies), the frequency of such offenses and the nature thereof;
 - c. conduct in any previous release program, such as probation, parole, work release, boot camp or alternative service;

- d. recommendations made by the Judge, Prosecuting Attorney and Sheriff of the county from which a person was sentenced, or other interested persons;
- e. the nature of the release plan, including the type of community surroundings in which the person plans to live and work;
- f. the person's employment record;
- g. the person's susceptibility to drugs or alcohol;
- h. the person's basic good health, physical and mental;
- i. Any inmate who receives a risk assessment score of 21 or higher, may be scheduled for an interview before being transferred to parole status;
- j. the person's participation in institutional activities, such as, educational programs, rehabilitation programs, work programs, and leisure time activities;
- k. when a transfer inmate who has been convicted of a Class Y felony receives a major disciplinary, that inmate must be scheduled for an interview to determine if he/she can be transferred or should be delayed to complete a program before transferred to parole status; and
- l. any inmate who receives a risk assessment score of medium high or higher, may be scheduled for an interview before being transferred to parole status.
- m. The failure of an inmate incarcerated at the Varner Unit Super Max to attain level 5.

VIII. EXPUNGING THE RECORDS OF "ACT 378 PARTICIPANTS"

A person sentenced to the Department under Act 378 of 1975, as amended (Arkansas Code Annotated Section 16-93-501 et. seq.), shall receive an expungement of his/her records by the following process:

1. After the person discharges the entire sentence imposed by the Court, a report will be submitted by the Department of Correction to the chairperson of the Post Prison Transfer Board. After reviewing the information, the chairperson shall approve an expungement, if required by law.
2. Upon approval, the Chairperson, or his/her designee, shall complete a Certificate of Expungement which shall be forwarded to the person by the Department of Correction staff.
3. The Department of Correction staff will notify all pertinent law enforcement agencies and the Circuit Clerk's office(s) that the person's record has been expunged. The record will then be sealed and sequestered, to be made available only to law enforcement or judicial officials.

IX. PAROLE CONSIDERATION OF PERSONS RELEASED UNDER ACT 814 OF 1983, CONDITIONAL 309 AND BOOT CAMP

(NOTE: Eligibility for this Act expires as of January 1, 1994, pursuant to Acts 550/532 of 1993.)

1. An Act 814 releasee will be scheduled to appear before the Board or a designated panel at a regularly scheduled meeting when the person is eligible for parole.
2. It will be the responsibility of the officer supervising the Act 814 releasee to notify the person of the time, place and date of the person's scheduled appearance before the Board or its designated panel.
3. If the person's application for parole is denied, he/she will be reviewed by the Board, or its designated panel, for parole consideration after a period of one (1) year, unless otherwise designated by the Board.
4. The person may waive his/her appearance before the Board, or its designated panel.

X. TRANSFER OR PAROLE CONSIDERATION OF OUT-OF-STATE PERSONS, INTERSTATE COMPACT, ACT 290 AND REGULAR BOOT CAMP PAROLEE

The Board will transfer or consider for parole those eligible persons serving Arkansas sentences outside the State of Arkansas in the following manner:

1. When a person confined in the prison system of another state or the federal system becomes eligible for transfer or parole in Arkansas, as indicated by a certified copy of a Judgment and Commitment Order from a court of this state, the appropriate records office of the Department of Correction shall notify their Parole Services staff and/or the Department of Community Correction staff.
2. Before taking action on a transfer or parole request by an out-of-state person, Parole Services and/or the Department of Community Correction will request, in writing, that the corresponding board or commission in the

jurisdiction where the person is incarcerated will provide the following information: 1) in general transfer cases, a risk assessment evaluation; 2) in discretionary transfer cases or parole cases, information relevant to the question of whether the person should be released and a recommendation.

3. The board will use as the basis of its conditions of transfer and/or its release decision the recommendation of, and/or the information provided by, the corresponding board or commission in lieu of the person's personal appearance before the Board. The Board will also consider information about the person and his crime provided by parole staff, law enforcement agencies, the victim(s) (or the victim(s)' next-of-kin), public officials, the person being considered and other interested persons.
4. All other provisions of Arkansas law pertaining to transfer and/or the granting or denying of parole to persons held by the Department of Correction shall apply.

XI. RELEASE DECISIONS

A person considered by the Board for release will be advised in writing of the Board's decision. The notification will include the Board's action and the most significant reason(s) for that action. The needs of safety and control within each unit prescribe that no information concerning the vote on possible release of an inmate will be made until the Monday following the ratification of voting held at a regularly scheduled meeting of the Board.

XII. NOTIFICATION OF OFFICIALS AND VICTIMS

Prior to a person's consideration by the Board, the Board will solicit comments from the victim(s) (or the victim(s)' next-of-kin), if the crime was a Class Y, A, or B offense, manslaughter, battery or any sexual offense, any crime involving death, personal injury or the threat of personal injury or death, or any crime in which the victim(s) (or the victim(s)' next-of-kin) have requested in writing to be notified. Such notifications of consideration shall include reconsiderations.

The Board will also solicit comments from the Judge, Prosecuting Attorney and the Sheriff of the county wherein the crime was committed.

Pre-release reports by the Department of Community Correction and/or risk assessment evaluations from the Department of Correction will also be prepared and presented to the Board, along with other available information on the person being transferred or considered for parole, the circumstances of the crime and the release plan.

Victim(s) of the crime (or the victim(s)' next-of-kin) who wish to participate in the victim input process have two responsibilities: (1) to notify the Board or its designee of their intention to provide input, and (2) to provide to the Board or its designee a correct and current mailing address.

Supporting documentation of the victim(s)' (or the victim(s)' next-of-kin) claims will be accepted by the Board. In cases involving the transfer of an inmate, the victim(s) or victim(s)' next-of-kin may request and be granted a hearing to provide input concerning the inmate's release conditions only.

All hearings will be conducted by a member or members of the Board.

XIII. RECONSIDERATION OF PAROLE OR DISCRETIONARY TRANSFER

A person or his/her attorney may request reconsideration of any decision of the Board. Written requests for reconsideration shall be submitted to the Board. Only one reconsideration request will generally be considered by the Board for a particular Board action.

Any two (2) members of the prevailing side may schedule the inmate to appear before the Board with the Chairperson being able to be included in the two (2) members had the Chairperson not voted nor voted in the negative of the previous decision. Any denial shall not be reconsidered for a period of six (6) months following the most recent denial vote except by consideration of the Full Board and a majority vote granting such reconsideration.

XIV. NOTICE OF RELEASE

At the time that a person is paroled or transferred by the Board, the Department of Community Correction shall give written notice of the granting of the release or transfer to the Sheriff, the Judge, and the Chief(s) of Police of all cities of the first class of the county from which the person was sentenced.

If a person is released to a county other than that from which he/she was committed, the Department of Community Correction, or its designee, shall give notice to the Chief of Police or Marshall of all cities to which he/she is released, and the Sheriff of the county to which he/she is released.

A record shall be kept of the actions of the Board and the Parole Services staff shall notify each institution of decisions relating to persons who are or have been confined therein.

XV. SUPERVISION OF RELEASEE

Every person, while on release shall be subject to the orders of the Board. Failure to abide by any of the conditions as instructed may result in revocation of his/her conditional release.

Each releasee, while under supervision, must abide by the following rules:

1. **REPORTS**: You must report to your supervising officer within 72 hours after your release. Thereafter, you must report as instructed by your supervising officer. All written and oral statements made by you to your supervising officer must be truthful.
2. **EMPLOYMENT/EDUCATION**: You must maintain approved employment or be enrolled in an approved education program unless otherwise directed. You must obtain permission from your supervising officer before quitting your employment or education program. If you lose your job or are terminated from your education program, you must notify your supervising officer within 48 hours.
3. **RESIDENCE AND TRAVEL**: You must obtain prior approval from your supervising officer to change your place of residence, stay away from your approved residence overnight, or leave your assigned county.
4. **LAWS**: You must obey all federal and state laws, local ordinances and court orders. You must report any arrest, citation, or summons to your supervising officer within 48 hours.
5. **WEAPONS**: You must not own, possess, use, sell or have under your control any firearm (or imitation) or other dangerous weapon, or be in the

company of any person possessing such weapons. You must not possess any ammunition.

6. ALCOHOL/CONTROLLED SUBSTANCES: You will avoid the excessive use of alcohol, or abstain completely if directed, and will stay out of bars, taverns, clubs, and liquor stores. You must not sell, deliver or possess, or use controlled substances except as prescribed by a physician. You will submit yourself to random testing for the use of intoxicants and/or controlled substances.
7. ASSOCIATION: You must not associate with convicted felons, persons who are engaged in criminal activity, or other persons with whom your supervising officer instructs you not to associate. (Association with convicted felons at work, in counseling programs, in church, or in other locations and circumstances specifically approved by the Post Prison Transfer Board or your supervising officer is not prohibited).
8. SUPERVISION FEES: You must pay a monthly supervision fee unless granted an exemption. Community service work in lieu of supervision fees may be required.
9. COOPERATION: You must, at all times, cooperate with your supervising officer and the Post Prison Transfer Board. You must submit yourself to any rehabilitative, medical, or counseling program that the Post Prison Transfer Board or your supervising officer deems appropriate.
10. SEARCH AND SEIZURE: You must submit your person, place of residence, and motor vehicles to search and seizure at any time, day or night, with or without a search warrant, whenever requested to do so by any Department of Community Correction Officer.
11. WAIVER OF EXTRADITION: Your acceptance of conditional release constitutes an agreement to waive extradition to the State of Arkansas from any jurisdiction in or outside the United States where you may be found, and you also agree that you will not contest any effort by any jurisdiction to return you to the State of Arkansas to answer a charge of violation of any of the conditions of your release.
12. SPECIAL CONDITIONS: _____

The Board may set special conditions and the releasee must abide by any special conditions set by the Board, e.g., mental health, alcohol and/or drug abuse treatment program, or community service in lieu of fee exemption. Any exemption request of a special condition, must be approved by the Board.

Upon release, an order of restitution previously entered by a sentencing court against a releasee becomes a condition of that release. As such, within 90 days of release, an officer of the Department of Community Correction will submit a report to the Board setting forth the releasee's employment status, earning ability, financial resources and any other circumstances that may have a bearing on the releasee's ability to pay the ordered amount of restitution. After reception of this report, the Board will determine if the releasee has the ability to pay restitution. If the Board determines that the releasee has the ability to pay restitution, then it will establish an amount that must be paid periodically by the releasee.

As indicated in condition number 10, any releasee's automobile or residence may be searched by a Department of Community Correction officer, without a warrant based on probable cause, if the Department of Community Correction officer has reasonable grounds for investigating whether a releasee has violated the terms of his/her release or committed a crime. The term "reasonable grounds" does not mean that which would be necessary for probable cause. Rather, it means a reasonable suspicion that a releasee has committed a release violation or crime.

At any time during a releasee's conditional release, the Board may issue a warrant for the arrest of the releasee for violation of any conditions of release or may issue a notice to appear to answer a charge of a violation. The warrant or notice shall be served personally upon the releasee. The warrant shall authorize all officers named therein to place the releasee in custody at any suitable detention facility pending a hearing.

Any Department of Community Correction officer may arrest a releasee without a warrant or may deputize any officer with power of arrest to do so by giving the officer a written statement setting forth that the releasee, in the judgment of the Department of Community Correction officer, violated conditions of the releasee's release. The written statement delivered with the releasee by the arresting officer to the official in charge of the detention facility to which the releasee is brought shall be sufficient warrant for detaining the releasee pending disposition.

XVI. PARTICIPATION OF RELEASEE IN LAW ENFORCEMENT UNDERCOVER OPERATIONS

It is the policy of the Board that it will not authorize a releasee to participate in any Law Enforcement Undercover Operation. However, the Director of the Department of Community Correction may authorize releasee participation in undercover investigations in a manner consistent with the Department of Community Correction Field Operations Manual.

XVII. RELEASE REVOCATION

The following procedures govern the release revocation process:

1. The supervising officer submits a violation report alleging violation of conditions(s) of release.
2. The Board Chairperson or his/her designee issues a warrant.
3. The warrant and a Notice of Release Violation Action form setting out the charges and rights of the releasee are served by the supervising officer.
4. The supervising officer schedules a revocation hearing through the Board or its designee and a Notice of Revocation Hearing form is served by the supervising officer.
5. A revocation hearing is held in the community by the person designated by the Board to conduct revocation hearings, unless the releasee voluntarily, knowingly, and intelligently waives his/her right to a hearing.
6. Following the hearing, disposition forms are issued by the Board's designee and given to the supervising officer. If the release is revoked, the person will be scheduled to appear before the Board for release consideration as determined by the Board's designee.
7. If a releasee is found to have violated a condition(s) of his/her release, the Board, or its designee, may revoke his/her release or impose additional conditions of release.
8. A copy of the disposition form is served on the releasee, a copy is maintained in the field office, and a copy is returned to the Department of Correction with the releasee, if the release is revoked.
9. A report of the revocation hearing is prepared and distributed by the Board's designee to the Board, state file, field office and the releasee.

10. In the event that the Board's designee cannot schedule a timely revocation hearing:
 - a. A preliminary hearing shall be scheduled through the Board, or its designee.
 - b. A Special Hearing Examiner shall be appointed by the Chairperson, or his/her designee.
 - c. A preliminary hearing shall be held in the community, unless the releasee voluntarily, knowingly and intelligently waives his/her right to a preliminary hearing.
 - d. Following the preliminary hearing, disposition forms are issued by the Special Hearing Examiner and given to the supervising officer.
 - e. A copy of the disposition form is served on the releasee, a copy is maintained in the field office, and a copy is returned to the Department of Correction with the releasee, if the release is revoked.
 - f. The Special Hearing Examiner will notify the Board's designee as to whether a revocation hearing should be scheduled.
 - g. If the releasee is returned, a revocation hearing will be scheduled before the Board or its designee at the institution, unless the releasee voluntarily, knowingly, and intelligently waives his/her right to a hearing.
 - h. Following the hearing, disposition forms will be issued and distributed to the state file, field office, and the releasee.
 - i. A report of the revocation hearing will be prepared and distributed to the Board, state file, field office and the releasee.
11. A release violator may appeal his/her revocation by submitting a written appeal to the Board.
12. When a releasee receives a new felony conviction and is sentenced to prison, the release may be revoked without a hearing. Written notice of this action will be forwarded to the person with a copy to the state file. If the person's conviction is set aside on appeal or otherwise nullified, his/her release will be reinstated, unless the Board or its designee has previously found by a preponderance of the evidence, after a hearing, that the releasee inexcusably violated one or more conditions of release justifying revocation notwithstanding the lack of a conviction for a criminal offense.
13. A releasee who has been revoked because of a technical violation will automatically be reinstated 180 days after revocation unless objected to by one or more members of the Board.

The Board's designee for conducting final release revocation hearings is the Revocation Hearing Examiner, who must meet the following criteria:

1. Juris doctor degree or equivalent;
2. License to practice law in the State of Arkansas;
3. Experience and training in the areas of constitutional, criminal and parole laws.

An appeal of a release revocation is made in the following manner:

1. Appeal of a decision by the designee to revoke release must be made in writing by the releasee or his/her attorney to the Board within thirty (30) days from the date of the revocation hearing report unless the time period or other requirements are waived by the Board.
2. In the written appeal, the releasee or his/her attorney may request a general review of the decision to revoke and ask that the decision be reversed. The releasee or his/her attorney should state in the appeal specific reasons for the belief that the decision should be reversed.
3. The appeal shall be presented to the Board as soon as practicable after it is received. The report of the designee containing a summary of the evidence presented at the revocation hearing, the decision of the designee, and the reasons for the decision shall also be presented to the Board.
4. Upon the consideration of the appeal, the Board shall vote (1) to affirm the decision of the designee, (2) to reverse the decision of the designee, or (3) to schedule an appearance by the releasee before the Board for further consideration. If the releasee is scheduled to appear before the Board, he/she will be afforded the same rights he/she was afforded at the revocation hearing.

XVIII. EXECUTIVE CLEMENCY

RE: Applications for Executive Clemency (Commutation of Sentence), Pardon, reprieve, respite, or remission of fine or forfeiture shall be referred to the Post Prison Transfer Board for investigation.

1. Any person serving a term of years, life or life without parole may apply for executive clemency (commutation of sentence). An application form will be provided in a person, upon request, by the Institutional Parole Officer, unless an application by that person is currently pending. The completed form must be returned to the Institutional Parole Officer, who shall then forward it to the Parole Services Staff.
2. An application for executive clemency may be filed for one or more of the following reasons: (1) to correct an injustice which may have occurred during the person's trial; (2) life threatening medical condition that does not qualify for Act 290; (3) to reduce an excessive sentence; (4) the person's institutional adjustment has been exemplary, and the ends of justice have been achieved.
3. The Board will individually review each application. Board members will vote 1) to recommend that clemency be denied, or 2) schedule the person for a hearing before the Board. Any Board member may schedule a person for a hearing.
4. If an executive clemency applicant is scheduled for a hearing before the Board, the Parole Services staff will notify and solicit the recommendations and comments of the Sheriff, Prosecuting Attorney, and Circuit Judge of the jurisdiction in which the person was convicted. Before considering an applicant, the Board or its designee shall notify the victim(s) (or the victim(s)' next-of-kin) pursuant to code provisions, Board regulations and/or requests for notification. When notification is provided under this provision of law, the Board or its designee shall solicit a written or oral recommendation from the victim(s) (or the victim(s)' next-of-kin) regarding the granting of clemency.

If the person is serving a sentence of life without parole for Capital Murder, copies of the application will be filed with the Secretary of State, the Attorney General, the Sheriff of the county in which the offense was committed, the Prosecuting Attorney of the judicial district in which the applicant was found guilty and sentenced, and the Circuit Judge presiding over the proceedings at which the applicant was found guilty and sentenced or his/her successor. The application will also be published by Parole Services by placing two insertions, separated by a minimum of seven (7) days, in a newspaper of general circulation in the county in which the offense of the applicant was committed.

5. An applicant for executive clemency who appears before the Board may be accompanied by supporters, including his/her attorney. If the person is not incarcerated in this state, his/her appearance before the Board is not

necessary. The Board shall consider the statements of the applicant and a spokesperson, the applicant's file, the officer's report and/or a pre-sentence report and any documentary evidence presented by the applicant or other interested persons including the victim(s) (or the victim(s)' next-of-kin). On the basis of this information, the Board will vote (1) to recommend that clemency be granted, or (2) to recommend that clemency be denied. If the Board recommends that clemency be granted, it may specify the nature and terms of the commutation being recommended.

6. All applications for executive clemency considered by the Board, with the non-binding recommendation will be forwarded to the Governor for final action.
7. Once an application is submitted for screening and/or consideration, the process cannot be interrupted and the recommendation is final. There is no appeal process regarding recommendations forwarded to the Governor.

RE: Applications for Executive Clemency by Persons Sentenced to Death.

1. Any person sentenced to death may apply for executive clemency. An application for clemency must be filed no later than 21 days prior to any execution date set by the Governor.
2. When an execution date is set, Parole Services will cause to be sent to the person and the person's attorney of record certified letters informing them that no application for executive clemency filed within the 21-day period immediately preceding the execution date will be considered. The last date on which an application for executive clemency will be accepted will be specified in the letters. This date will be determined by counting back 21 days from the date of execution, with the day preceding the date of execution being counted as day 1. If the 21st date is a Saturday, Sunday, or holiday, an application filed on the next business day will be accepted.
3. An application for executive clemency will be considered as having been filed when it is received by Parole Services.
4. When a timely application for executive clemency has been filed, Parole Services will send copies of the application to (1) the Secretary of State; (2) the Attorney General; (3) the Sheriff of the county in which the offense was committed, or his/her designee; (4) the Prosecuting Attorney of the judicial district in which the applicant was found guilty and sentenced, or his/her designee; and (5) the Circuit Judge presiding over the proceedings at which

the applicant was found guilty and sentenced, or his/her successor. Arkansas Code Annotated Section 5-4-607(a)(1). Parole Services will send to the victim(s) (or the victim(s)' next-of-kin), at their last known address(es), notification of the person's application.

5. The application shall set forth the grounds upon which executive clemency is requested and shall be published by Parole Services by two (2) insertions, separated by a minimum of seven (7) days, in a newspaper of general circulation in the county or counties in which the offense or offenses of the applicant were committed. Arkansas Code Annotated Section 5-4-607 (a)(2).
6. The application for executive clemency shall be investigated by the Board and the Board, or a designated panel, shall interview the person concerning his/her request for clemency at least seven (7) days prior to the execution date. The Board shall submit to the Governor its recommendation, a report of the investigation, and all other information the Board may have regarding the applicant. Arkansas Code Annotated Section 16-93-204.

XIX. PARDONS

The purpose of a pardon is to restore rights that may have been lost as a result of a criminal conviction. A pardon does not restore the right to own or possess firearms unless restoration of this right is specifically stated in the order granting the pardon.

An application for a pardon is submitted by the applicant to the Department of Correction and/or the Department of Community Correction. Information concerning the crimes will be collected and the law enforcement officials, the Sentencing Judge, and the Prosecuting Attorney may be contacted to verify the information provided by the applicant. Comments concerning the application shall be solicited from the Judge, the Sheriff, the Prosecuting Attorney of the county wherein the crime was committed and the victim(s) of the crime (or the victim(s)' next-of-kin).

The application and information gathered by the Department of Correction and/or the Department of Community Correction shall be presented to the Board. The Board shall vote to recommend to the Governor that the pardon be either granted or denied. The application and supporting documentation, along with the Board's non-binding recommendation, shall be forwarded to the Governor for final action.

XX. CONDITIONAL PARDONS

The purpose of a conditional pardon is to conditionally restore certain rights to a person convicted of a federal offense. A conditional pardon cannot restore the right to own or possess firearms. The applicant must apply to the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

An application for a conditional pardon is submitted to the Department of Correction and/or the Department of Community Correction. Information is gathered by Field Services Division and presented to the Board. The Board shall vote to recommend to the Governor that a conditional pardon either be granted or denied. The application and supporting documentation, along with the Board's non-binding recommendation, shall be forwarded to the Governor for final action.

XXI. MISCELLANEOUS

The offices of the Board are open from 8:00 a.m. to 4:30 p.m., Monday through Friday (excluding state holidays). The public may contact the Board during those hours to obtain information or to make submissions or requests.

Attachment

Post Prison Transfer Board
POLICIES AND PROCEDURES FOR EXECUTIVE CLEMENCY
BY PERSONS SENTENCED TO DEATH

1. Any person sentenced to death may apply for Executive Clemency (Arkansas Constitution, Article 6, Section 18).
2. An application for Executive Clemency must be filed no later than 40 days prior to the scheduled execution date.
3. All exhibits or supporting documentation to be considered by the Post Prison Transfer Board should be attached to the Executive Clemency application at the time of filing.
4. The application shall set forth the specific reasons or grounds upon which Executive Clemency is requested. Failure to set forth specific grounds shall be cause for rejection and return of the application.
5. An application for Executive Clemency will be considered as having been duly filed when it is received by Institutional Parole Services at the Department of Correction.
6. The Post Prison Transfer Board, meeting in regular or special session, shall interview the inmate concerning his/her request for Executive Clemency at least 30 days prior to the execution date.
7. The Attorney will submit a list of all person who will appear at the Executive Clemency hearing on behalf of the inmate to the Post Prison Transfer Board and the Warden of the Maximum Security Unit on the day prior to the hearing. The list will indicate complete names and relationships to the inmate.
8. The time allocated for all presentations and/or testimony by the inmate, attorney and/or witnesses at the Executive Clemency Hearing shall be limited to a total of two (2) hours.
9. No more than four (4) persons (the inmate, attorney and two others) may present arguments and/or testify to the Post Prison Transfer Board at the Executive Clemency Hearing. The Board will accept written statements by other interested persons.
10. Tape recordings of the Executive Clemency Hearing will not be transcribed, but will be sent directly to the Governor with the clemency file and supporting evidence. The attorney is responsible for providing recorders and/or stenographers should a transcript be desired.
11. The Post Prison Transfer Board's decision will be available within 72 hours after completion of hearings for the inmate and protestors.
12. The Board Chairman with the approval of the Board, will make an exception in the interest of justice.

POST PRISON TRANSFER BOARD

DATE

QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE

DEPARTMENT/AGENCY POST PRISON TRANSFER BOARD
DIVISION POST PRISON TRANSFER BOARD
DIVISION DIRECTOR LEROY BROWNLEE
CONTACT PERSON SHARON HANSBERRY
ADDRESS 105 W. CAPITOL - TWO UNION NATIONAL
PLAZA BUILDING SUITE 501 - LITTLE ROCK, AR 72201
PHONE NO. 501-682-3850 FAX NO. 501-682-3860

INSTRUCTIONS

- A. Please make copies of this form for future use.
B. Please answer each question completely using layman terms. You may use additional sheets, if necessary.
C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
D. Submit two (2) copies of this questionnaire attached to the front of two (2) copies of your proposed rule and mail or deliver to:

Donna K. Davis
Subcommittee on Administrative Rules and Regulations
Arkansas Legislative Council
Bureau of Legislative Research
Room 315, State Capitol
Little Rock, AR 72201

RECEIVED

MAR 15 2002

BUREAU OF
LEGISLATIVE RESEARCH

- *****
1. What is the short title of this rule?
ARKANSAS POST PRISON TRANSFER BOARD POLICIES & PROCEDURES
2. What is the subject of the proposed rule?
This manual is a revision of the manual approved by the Subcommittee on Administrative Rules and Regulations in 1996.

3. Is this rule required to comply with federal statute or regulations? Yes _____
No xx

If yes, please provide the federal regulation and/or statute citation.
Act 979 of 1999 and Act 547 of 1993

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes _____
No xx

If yes, what is the effective date of the emergency rule?

When does the emergency rule expire?

Will this emergency rule be promulgated under the regular provisions of the Administrative Procedure Act? Yes _____ No _____

5. Is this a new rule? Yes _____ No xx

Does this repeal an existing rule? Yes xx No _____ If yes, please provide a copy of the repealed rule. SEE ATTACHMENT

Is this an amendment to an existing rule? If yes, please attach a markup showing the changes in the existing rule and a summary of the substantive changes. SEE ATTACHMENT

6. Cite the state law that grants the authority for this proposed rule? If codified, please give Arkansas Code citation. Act 979 of 1999

7. What is the purpose of this proposed rule? Why is it necessary? This manual is a revision of the manual approved in 1996. The manual includes new rules regarding inmates eligible per transfer and parole. It is being revised to reflect the additional changes to enhance the effectiveness and efficiency of the Post Prison Transfer Board which may accommodate the growing inmate population of the Department of Correction. As a result of the new powers and duties necessary to adequately address the influx of transfer inmates which resulted from Act 547 of 1993 and Act 979 of 1999.

8. Will a public hearing be held on this proposed rule? Yes _____ No xx If yes, please give the date, time, and place of the public hearing? At this time, we know of no controversy.

9. When does the public comment period expire? (Must provide a date.)
April 15, 2002

10. What is the proposed effective date of this proposed rule? (Must provide a date.)
Effective 10 days after review by the Legislative Council Subcommittee on Administrative Rules and Regulations. MAY 13, 2002 *AKH*

11. Do you expect this rule to be controversial? Yes _____ No xx If yes, please explain.

12. Please give the names of persons, groups, or organizations that you expect to comment on these rules? Please provide their position (for or against) if known.

Arkansas Department of Correction (FOR)
P.O. Box 8707
Pine Bluff, AR 71611

Arkansas Department of Community Correction (FOR)
105 West Capitol - Suite 200
Little Rock, AR 72201

We know of no objections at this time.