

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Bearden**

A Bill ACT 608 OF 1991

SENATE BILL 437

For An Act To Be Entitled

8 "AN ACT TO AMEND §5-4-104(e) ARKANSAS CODE ANNOTATED TO
9 PROVIDE FOR THE IMPOSITION OF A FINE, RESTITUTION, OR
10 SUSPENDED IMPOSITION OF AN ADDITIONAL TERM OF IMPRISONMENT
11 IN ADDITION TO A MANDATORY TERM OF IMPRISONMENT IN CLASS Y
12 FELONY AND SECOND DEGREE MURDER CASES; TO CLARIFY
13 PROVISIONS PROHIBITING SUSPENDED SENTENCES FOR CERTAIN
14 OFFENSES; TO AMEND §5-4-301 ARKANSAS CODE ANNOTATED TO
15 CLARIFY PROVISIONS PROHIBITING SUSPENDED SENTENCES FOR
16 CERTAIN OFFENSES; AND FOR OTHER PURPOSES."

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

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20 SECTION 1. Arkansas Code Annotated §5-4-104(c) is amended to read as
21 follows:

22 "(c) A defendant convicted of a Class Y felony or murder in the second
23 degree shall be sentenced to a term of imprisonment in accordance with §§
24 5-4-401 - 5-4-404. In addition to imposing a term of imprisonment, the trial
25 court may sentence one convicted of a Class Y felony or murder in the second
26 degree to any one or more of the following:

27 (1) pay a fine as authorized by §§ 5-4-201 - 5-4-203;

28 (2) make restitution; or

29 (3) suspend imposition of an additional term of imprisonment, as
30 authorized by subsection (e)(3) of this section."

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32 SECTION 2. Arkansas Code Annotated §5-4-104(e)(1) is amended to read as
33 follows:

34 "(e)(1) The court shall not suspend imposition of sentence as to a term
35 of imprisonment nor place the defendant on probation for the following
36 offenses:

- 1 (A) capital murder,
- 2 (B) treason,
- 3 (C) Class Y felonies, except to the extent suspension of an
- 4 additional term of imprisonment is permitted in subsection (c) of this
- 5 section,
- 6 (D) driving while intoxicated,
- 7 (E) murder in the second degree, except to the extent
- 8 suspension of an additional term of imprisonment is permitted in subsection
- 9 (c) of this section,
- 10 (F) drug related offenses under the Uniform Controlled
- 11 Substances Act, except to the extent that probation is otherwise permitted
- 12 under that act. In other cases, the court may suspend imposition of sentence
- 13 or place the defendant on probation, in accordance with §§ 5-4-301 - 5-4-311,
- 14 except as otherwise specifically prohibited by statute."

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16 SECTION 3. Arkansas Code Annotated §5-4-301(a)(1) is amended to read as
17 follows:

18 "(a)(1) A court shall not suspend imposition of sentence as to a term
19 of imprisonment nor place the defendant on probation for the following
20 offenses:

- 21 (A) capital murder,
- 22 (B) treason,
- 23 (C) Class Y felonies, except to the extent suspension of an
- 24 additional term of imprisonment is permitted in §5-4-104(c),
- 25 (D) driving while intoxicated,
- 26 (E) murder in the second degree, except to the extent
- 27 suspension of an additional term of imprisonment is permitted in §5-4-104(c),
- 28 (F) drug related offenses under the Uniform Controlled
- 29 Substances Act, except to the extent that probation is otherwise permitted
- 30 under that act. In other cases, the court may suspend imposition of sentence
- 31 or place the defendant on probation, except as otherwise specifically
- 32 prohibited by statute."

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34 SECTION 4. It is the express intent of this act to clarify current
35 sentencing provisions for Class Y felonies, second degree murder, driving

1 while intoxicated and drug related offenses under the Uniform Controlled
2 Substances Act. Current provisions have created considerable confusion as to
3 what forms of punishment are permitted or prohibited in certain cases. Part
4 of the confusion stems from the fact that §5-4-301 has never been amended to
5 correlate with the language of §5-4-104, nor with amendments to other criminal
6 offense provisions. See *Harris v. State*, 15 Ark. App. 58, 689 S.W.2d 353
7 (1985). Additional confusion has arisen because the intent underlying
8 mandatory sentences for the enumerated offenses is not furthered by
9 disallowing the imposition of other forms of punishment in addition to
10 mandatory imprisonment. The intent of §5-4-104(e)(1) and §5-4-301(a)(1) was
11 to insure that persons convicted of serious offenses received, and were forced
12 to serve, sentences commensurate with the severity of the offense committed.
13 See *id.* at 62 (Glaze, J., concurring). It is inconceivable that one convicted
14 of the most reprehensible crime must be imprisoned, but at the same time,
15 cannot be fined or ordered to pay restitution to the victim or the victim's
16 family, or be subjected to a suspended additional term of imprisonment.

17 Finally, confusion has arisen by the fact that certain offenses codified
18 outside of the Criminal Code contain specific sentencing provisions that may
19 or may not be read consistently with sentencing provisions within the code.
20 For example, current provisions under the Omnibus DWI ACT require mandatory
21 imprisonment, but expressly disallow only probation for first offenders under
22 §16-93-301. Insofar as sentencing provisions within the Criminal Code do not
23 expressly prohibit suspension of sentences or probation for offenses under the
24 act, there is some question as to which provision prevails. See *Lovell v.*
25 *State*, 283 Ark. 425, 678 S.W.2d 318 (1984), reh'q. denied, 283 Ark. 434, 678
26 S.W.2d 318 (1984). It is the intent of this act to resolve the ambiguity.

27 As noted in *Lovell*, *id.* at 434-B-C, statutes possessing their own penal
28 provisions concerning probation and suspended sentences have been, and may
29 later be, enacted. It is the intent of this act, in the amendment of §5-4-
30 104(e)(1) and §5-4-301(a)(1), to provide that provisions within acts
31 possessing their own penal provisions will control.

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33 SECTION 5. All provisions of this act of a general and permanent nature
34 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
35 Revision Commission shall incorporate the same in the Code.

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SECTION 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 7. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 8. EMERGENCY. It is hereby found and determined by the Seventy-Eighth General Assembly that there is considerable confusion concerning the application and effect of sentencing provisions for Class Y felonies, second degree murder, driving while intoxicated and drug related offenses; that amendment of existing provisions is necessary to clarify these provisions; and that this act is immediately necessary to achieve that end for the protection of the public health and safety and, therefore, should be given effect immediately. Therefore, an emergency is hereby declared to exist and this act, being necessary for the preservation of public peace, health and safety, shall be in full force and effect from and after its passage and approval.

APPROVED: 3-19-91