

**ARKANSAS SENATE**  
84th General Assembly - Regular Session, 2003  
**Amendment Form**

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**Subtitle of Senate Bill No. 969**  
"THE ARKANSAS INTOLERABLE ACTS LAW."  
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**Amendment No. 1 to Senate Bill No. 969.**

Amend Senate Bill No. 969 as originally introduced:

Page 1, delete line 9 and substitute:

"AN ACT TO ENHANCE THE SENTENCE OF ANY PERSON COMMITTING A FELONY THAT INVOLVES AN INTOLERABLE ACT; AND FOR OTHER PURPOSES."

And

Page 1, delete line 12 and substitute:

"AN ACT TO ENHANCE THE SENTENCE OF ANY PERSON COMMITTING A FELONY THAT INVOLVES AN INTOLERABLE ACT."

AND

Delete everything after the enacting clause and substitute:

"SECTION 1. Arkansas Code § 5-4-501 is amended to read as follows:  
5-4-501. Habitual offenders - Sentencing for felony.

(a)(1) A defendant meeting the following criteria may be sentenced to an extended term of imprisonment as set forth in subdivision (a)(2) of this section:

(A) A defendant who is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993, and who has previously been convicted of more than one (1) but fewer than four (4) felonies or who has been found guilty of more than one (1) but fewer than four (4) felonies;

(B) A defendant who is convicted of any felony enumerated in subsection (c) of this section committed after August 31, 1997, and who has previously been convicted of more than one (1) but fewer than four (4) felonies not enumerated in subsection (c) of this section or who has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (c) of this section; ~~or~~

(C) A defendant who is convicted of any felony enumerated in subsection (d) of this section committed after August 31, 1997, and who has previously been convicted of more than one (1) but fewer than four (4) felonies not enumerated in subsection (d) of this section or who has been



found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (d) of this section; ~~or~~

(D) A defendant who pleads guilty or nolo contendere to, or is found guilty of any felony that in the course of and in the furtherance of the felony the defendant committed an intolerable act enumerated in subsection (i) of this section.

(2) The extended terms of imprisonment for the defendants described in subdivision (a)(1) of this section are as follows:

(A) For a conviction of a Class Y felony, a term of not less than ten (10) years nor more than sixty (60) years, or life;

(B) For a conviction of a Class A felony, a term of not less than six (6) years nor more than fifty (50) years;

(C) For a conviction of a Class B felony, a term of not less than five (5) years nor more than thirty (30) years;

(D) For a conviction of a Class C felony, a term of not less than three (3) years nor more than twenty (20) years;

(E) For a conviction of a Class D felony, a term of not more than twelve (12) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, not more than five (5) years more than the maximum sentence for the unclassified offense; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, not less than ten (10) years nor more than fifty (50) years, or life.

(b)(1) A defendant meeting the following criteria may be sentenced to an extended term of imprisonment as set forth in subdivision (b)(2) of this section:

(A) A defendant who is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993, and who has previously been convicted of four (4) or more felonies or who has been found guilty of four (4) or more felonies;

(B) A defendant who is convicted of any felony enumerated in subsection (c) of this section committed after June 30, 1997, and who has previously been convicted of four (4) or more felonies not enumerated in subsection (c) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (c) of this section; ~~or~~

(C) A defendant who is convicted of any felony enumerated in subsection (d) of this section committed after June 30, 1997, and who has previously been convicted of four (4) or more felonies not enumerated in subsection (d) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (d) of this section; ~~or~~

(D) A defendant who pleads guilty or nolo contendere to, or is found guilty of any felony and who has previously plead guilty or nolo contendere to, or been found guilty of a felony that in the course of and in the furtherance of the felony the defendant committed an intolerable act enumerated in subsection (i) of this section.

(2) The extended terms of imprisonment for the defendants described in subdivision (b)(1) of this section are as follows:

(A) For a conviction of a Class Y felony, a term of not less than ten (10) years nor more than life;

(B) For a conviction of a Class A felony, a term of not less than six (6) years nor more than sixty (60) years;

(C) For a conviction of a Class B felony, a term of not less than five (5) years nor more than forty (40) years;

(D) For a conviction of a Class C felony, a term of not less than three (3) years nor more than thirty (30) years;

(E) For a conviction of a Class D felony, a term of not more than fifteen (15) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, not more than twice the maximum sentence for the unclassified offense; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, not less than ten (10) years nor more than fifty (50) years, or life.

(c)(1) A defendant who is convicted of a serious felony involving violence enumerated in subdivision (c)(2) of this section, or a defendant who pleads guilty or nolo contendere to, or is found guilty of any felony that in the course of and in the furtherance of the felony offense the defendant committed an intolerable act enumerated in subsection (i) of this section, and who has previously been convicted of one (1) or more of the serious felonies involving violence or an intolerable act enumerated in subdivision (c)(2) and subsection (i) of this section shall be sentenced to imprisonment without eligibility except under § 16-93-1302 for parole or community punishment transfer for a term of not less than forty (40) years nor more than eighty (80) years, or life.

(2) For the purposes of this subsection, a serious felony involving violence shall mean:

(A) Any of the following felonies:

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

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

(iii) Kidnapping, § 5-11-102, involving activities making it a Class Y felony;

(iv) Aggravated robbery, § 5-12-103;

(v) Rape, § 5-14-103;

(vi) Terroristic act, § 5-13-310, involving activities making it a Class Y felony;

(vii) Causing a catastrophe, § 5-38-202(a); or

(B) A conviction of a comparable serious felony involving violence from another jurisdiction.

(3)(A) The following procedure shall govern trials at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the serious felony involving violence, or an intolerable act, with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)(a) If the defendant is found guilty of the serious felony involving violence, or an intolerable act, the trial court, out of the hearing of the jury, shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to, or been found guilty of, a prior serious felony involving violence or an intolerable act and shall determine the number of such prior felony convictions, if any.

(b) The defendant shall have the right to hear and controvert this evidence and to offer evidence in his or her

support;

(iii)(a) The trial court shall then instruct the jury as to the number of previous convictions for serious felonies involving violence or an intolerable act and the statutory sentencing range.

(b) The jury may be advised as to the nature of the previous convictions and the date and place thereof; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to one of the enumerated serious felonies involving violence or an intolerable act under Arkansas criminal law shall lie within the discretion of the trial judge at the time of sentencing.

(d)(1) A defendant who is convicted of a felony involving violence enumerated in subdivision (d)(2) of this section, or a defendant who pleads guilty or nolo contendere to, or is found guilty of any felony that in the course of and in the furtherance of the felony the defendant committed an intolerable act enumerated in subsection (i) of this section, and who has previously been convicted of two (2) or more of the felonies involving violence or an intolerable act enumerated in subdivision (d)(2) and subsection (i) of this section shall be sentenced to an extended term of imprisonment without eligibility except under § 16-93-1302 for parole or community punishment transfer as follows:

(A) For a conviction of a Class Y felony, a term of not less than life in prison;

(B) For a conviction of a Class A felony, a term of not less than forty (40) years nor more than life in prison;

(C) For a conviction of a Class B felony or for a conviction of an unclassified felony punishable by life imprisonment, a term of not less than thirty (30) years nor more than sixty (60) years;

(D) For a conviction of a Class C felony, a term of not less than twenty-five (25) years nor more than forty (40) years;

(E) For a conviction of a Class D felony, a term of not less than twenty (20) years nor more than forty (40) years; and

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, not more than three (3) times the maximum sentence for the unclassified offense.

(2) For the purposes of this subsection, a felony involving violence shall mean:

(A) Any of the following felonies:

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

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

(iii) Kidnapping, § 5-11-102;

(iv) Aggravated robbery, § 5-12-103;

(v) Rape, § 5-14-103;

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

(vii) Terroristic act, § 5-13-310;

(viii) Sexual abuse in the first degree, § 5-14-108;

(ix) Violation of a minor in the first degree, § 5-14-120;

(x) Domestic battering in the first degree, § 5-26-303;

(xi) Unlawful discharge of a firearm from a vehicle,

§ 5-74-107;

(xii) Criminal use of prohibited weapons, § 5-73-104, involving activities making it a Class B felony; or

(xiii) A felony attempt, solicitation, or conspiracy to commit:

- (a) Capital murder, § 5-10-101;
- (b) Murder in the first degree, § 5-10-102;
- (c) Murder in the second degree, § 5-10-103;
- (d) Kidnapping, § 5-11-102;
- (e) Aggravated robbery, § 5-12-103;
- (f) Rape, § 5-14-103;
- (g) Battery in the first degree, § 5-13-201;

or

(h) Domestic battering in the first degree, § 5-26-303; or

(B) A conviction of a comparable felony involving violence from another jurisdiction.

(3)(A) The following procedure shall govern trials at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the felony involving violence or an intolerable act with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)(a) If the defendant is found guilty of the felony involving violence, or an intolerable act, the trial court, out of the hearing of the jury, shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to, or been found guilty of, two (2) or more prior felonies involving violence, or an intolerable act, and shall determine the number of such prior felony convictions, if any.

(b) The defendant shall have the right to hear and controvert this evidence and to offer evidence in his or her support;

(iii)(a) The trial court shall then instruct the jury as to the number of previous convictions involving violence or an intolerable act, and the statutory sentencing range.

(b) The jury may be advised as to the nature of the previous convictions and the date and place thereof; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to one of the enumerated felonies involving violence or an intolerable act under Arkansas criminal law shall lie within the discretion of the trial judge at the time of sentencing.

(e)(1) For the purpose of determining whether a defendant has previously been convicted or found guilty of two (2) or more felonies, a conviction or finding of guilt of burglary, § 5-39-201, and of the felony that was the object of the burglary shall be considered a single felony conviction or finding of guilt.

(2) A conviction or finding of guilt of an offense that was a felony under the law in effect prior to January 1, 1976, shall be considered a previous felony conviction or finding of guilt.

(f) For the purposes of determining whether a defendant has previously been convicted of a serious felony involving violence or a felony involving violence under subsections (c) and (d) of this section, or a felony involving an intolerable act, the entry of a plea of guilty or nolo contendere or a finding of guilt by a court to a felony enumerated in subsections (c) and (d) of this section, respectively, as a result of which a court places the defendant on a suspended imposition of sentence, a suspended sentence, or probation, or sentences the defendant to the Department of Correction, shall be considered a previous felony conviction.

(g) Any defendant deemed eligible to be sentenced under provisions of both subsections (c) and (d) of this section shall be sentenced only under subsection (d) of this section.

(h) In the event the provisions of subsection (c) or (d) of this section, or both, are held invalid by a court, the defendant's case shall be remanded to the trial court for resentencing of the defendant under the provisions of subsections (a) and (b) of this section.

(i) For purposes of this section, an "intolerable act" means:

- (1) Dragging a person with a motor vehicle;
- (2) Brutally beating or bludgeoning a person with a rock, baseball bat, pipe, or other blunt object;
- (3) Beheading a person;
- (4) Burning a person;
- (5) Hanging a person;
- (6) Torturing a person;
- (7) Shooting or beating a person in the groin area;
- (8) Mutilating the genitalia of a person;
- (9) Cutting off body parts of a person;
- (10) Carving words or symbols into the skin of a person; or
- (11) Vandalizing, burning or bombing a church, temple, mosque, synagogue or other place or worship."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator Wilkins  
PBB/RCK - 040420031439  
RCK866

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Secretary