

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**

A Bill

SENATE BILL 364

4 **By: Senators Everett, Bookout, Bell, and Keet**

5
6

For An Act To Be Entitled

8 "AN ACT TO PROVIDE FOR SEPARATE CONSIDERATION OF GUILT AND
9 SENTENCING; AND FOR OTHER PURPOSES."

10

Subtitle

11

12 "TO PROVIDE FOR SEPARATE CONSIDERATION OF GUILT AND
13 SENTENCING"

14

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

16

17 SECTION 1. Arkansas Code Annotated 5-4-103 is amended to read as
18 follows:

19 "5-4-103. Sentencing - Role of jury and court.

20 (a) If a defendant is charged with a felony and found guilty of an
21 offense by a jury, the jury shall fix punishment in a separate proceeding as
22 authorized by this chapter.

23 (b) Except as provided by §§ 5-4-601 - 5-4-605 and 5-4-607 - 5-4-609,
24 the court shall fix punishment as authorized by this chapter in any case
25 where:

26 (1) The defendant pleads guilty to an offense; or

27 (2) The defendant's guilt is tried by the court; or

28 (3) The jury fails to agree on punishment; or

29 (4) The prosecution and the defense agree that the court may fix
30 punishment; or

31 (5) A jury sentence is found by the trial court or an appellate
32 court to be in excess of the punishment authorized by law."

33

34 SECTION 2. Bifurcated sentencing procedures:

35 (a) The following procedure shall govern jury trials which include any

1 felony charges:

2 (1) The jury shall first hear all evidence relevant to every
3 charge on which a defendant is being tried and shall retire to reach a verdict
4 on each charge.

5 (2) If the defendant is found guilty of one or more charges, the
6 jury shall then hear additional evidence relevant to sentencing on those
7 charges. Evidence introduced in the guilt phase may be considered, but need
8 not be reintroduced at the sentencing phase.

9 (3) Following the introduction of additional evidence relevant to
10 *sentencing (if any), instruction on the law and argument, the jury shall again*
11 retire and determine a sentence within the statutory range.

12 (4) The court, in its discretion, may also instruct the jury that
13 counsel may argue as to alternative sentences for which the defendant may
14 qualify. The jury, in its discretion, may make a recommendation as to an
15 alternative sentence. However this recommendation shall not be binding on the
16 court.

17 (5) After a jury finds guilt, the defendant, with the agreement of
18 the prosecution and the consent of the court, may waive jury sentencing, in
19 which case the court shall impose sentence.

20 (6) After a plea of guilty, the defendant, with the agreement of
21 the prosecution and the consent of the court, may be sentenced by a jury
22 impanelled for purposes of sentencing only.

23 (b) The following procedure shall govern sentencing by the court:

24 (1) When either party requests to present evidence relevant to
25 sentencing, the court shall hear or receive such evidence and any rebuttal by
26 the opposing party.

27 (2) If neither party requests a sentencing hearing, the court may
28 order one or may order a presentence investigation pursuant to A.C.A. 5-4-102.

29 (3) The court may hear or may request argument relevant to the
30 appropriate sentence following either a hearing or a presentence
31 investigation.

32 (4) A victim shall be given notice by the prosecuting attorney
33 that an offender is to be sentenced and of his right to appear and be heard at
34 any sentencing hearing or proceeding whenever it follows a plea or court
35 trial.

1 (c) Evidence relevant to sentencing by either the court or a jury may
2 include, but is not limited to the following, *provided no evidence shall be*
3 *construed under this section as overriding the Rape Shield statute in Arkansas*
4 *Code Annotated 16-42-101:*

5 (1) the law applicable to parole, *meritorious good time* or
6 transfer;

7 (2) prior convictions of the defendant, both felony and
8 misdemeanor - the jury may be advised as to the nature of the previous
9 convictions, the date and place thereof, the sentence received and the date of
10 release from confinement or supervision from all prior offenses;

11 (3) prior judicial determinations of delinquency in juvenile
12 court, subject to the following limitations:

13 (i) that prior delinquency adjudications be subject to a
14 judicial determination that the relevant value of the prior juvenile
15 adjudication outweigh its prejudicial value; and

16 (ii) that consideration only be given to juvenile
17 delinquency adjudications for crimes for which the juvenile could have been
18 tried as an adult; and

19 (iii) that in no event shall delinquency adjudications for
20 acts occurring more than 10 years prior to the commission of the offense
21 charged be considered;

22 (4) victim impact evidence or statement;

23 (5) *relevant* character evidence;

24 (6) *evidence of aggravating and mitigating circumstances - the*
25 *criteria for departure from the sentencing standards may serve as examples of*
26 *this type of evidence;*

27 (7) evidence relevant to guilt presented in the first stage;

28 (8) evidence held inadmissible in the first stage may be
29 resubmitted for consideration in the second stage if the basis for exclusion
30 did not apply to sentencing;

31 (9) rebuttal evidence.

32 (d) Proof of prior convictions, both felony and misdemeanor, and proof
33 of juvenile adjudications shall follow the procedures outlined in A.C.A. 5-4-
34 502 - 504.

35

1 SECTION 3. Arkansas Code Annotated 9-27-309 is amended to read as
2 follows:

3 "9-27-309. Confidentiality of records.

4 (a) All records may be closed and confidential within the discretion of
5 the court except records of delinquency adjudications for which a juvenile
6 could have been tried as an adult shall be made available to prosecuting
7 attorneys *for use at sentencing* if the juvenile is subsequently tried as an
8 adult.

9 (b) Records of delinquency adjudications for which a juvenile could
10 have been tried as an adult shall be kept for ten (10) years after such
11 adjudication. Thereafter they may be expunged. The court may expunge other
12 juvenile records at any time and shall expunge all the records of a juvenile
13 upon his twenty-first birthday, in other types of delinquency,
14 dependency-neglect, or families in need of services cases. For purposes of
15 this section, expunge means to destroy.

16 (c) Nothing in this section applies to or restricts the use or
17 publication of statistics, data, or other materials which summarize or refer
18 to any records, reports, statements, notes, or other information in the
19 aggregate and which do not refer to or disclose the identity of any juvenile
20 defendant in any proceeding when used only for the purpose of research and
21 study."
22

23 SECTION 4. Arkansas Code Annotated 9-27-320 is amended to read as
24 follows:

25 "9-27-320. Fingerprinting or photographing.

26 (a) A juvenile shall not be photographed or fingerprinted under this
27 subchapter by any law enforcement agency unless he has been taken into custody
28 on an allegation of delinquency. If the juvenile *is adjudicated delinquent*
29 *for an offense for which he* could have been charged as an adult on the
30 delinquent offense, *he* shall be photographed and fingerprinted and the
31 photographs and fingerprints shall be maintained for a period of ten (10)
32 years.

33 (b) Copies of a juvenile's fingerprints or photograph shall be made
34 available only to other law enforcement agencies and to the juvenile court.
35 Photographs and fingerprints of juveniles adjudicated delinquent for offenses

1 for which they could have been tried as adults shall be made available to
2 prosecuting attorneys and circuit courts *for use at sentencing* in subsequent
3 adult criminal proceedings against those same individuals.

4 (c) Each law enforcement agency in the state shall keep a separate file
5 of photographs and fingerprints, it being the intention that such photographs
6 and fingerprints of juveniles not be kept in the same file with those of
7 adults.

8 (d) However, in any case where the juvenile is found not to have
9 committed the alleged delinquent act, the juvenile court may order any law
10 enforcement agency to return all pictures and fingerprints to the juvenile
11 court and shall order the law enforcement agency that took the juvenile into
12 custody to mark the arrest record with the notation *_found not to have*
13 *committed the alleged offense_.*"

14

15 SECTION 5. Arkansas Code Annotated 9-27-345 is amended to read as
16 follows:

17 "9-27-345. Admissibility of evidence.

18 Juvenile adjudications of delinquency for offenses for which the
19 juvenile could have been tried as an adult may be used *at the sentencing phase*
20 in subsequent adult criminal proceedings against those same individuals. No
21 other evidence adduced against a juvenile in any proceeding under this
22 subchapter nor the fact of adjudication or disposition shall be admissible
23 evidence against such juvenile in any civil, criminal, or other proceeding.
24 However, such evidence shall be admissible, where proper, in subsequent
25 proceedings against the same juvenile under this subchapter."

26

27 SECTION 6. Arkansas Code Annotated 12-12-207(c) is amended to read as
28 follows:

29 "(c) The information to be stored in the Arkansas Crime Information
30 Center under the authority of this subchapter shall be restricted to records
31 of outstanding warrants for arrest, felony informations, and indictments
32 pending in circuit courts; misdemeanor informations and indictments to the
33 extent provided in this section pending in municipal and circuit courts;
34 commitments to the penitentiary and other correctional agencies; felony
35 convictions; records of juvenile delinquency adjudications for which the

1 juvenile could have been tried as an adult; persons on felony parole post-
2 prison supervision or probation; stolen property; moving traffic violations;
3 traffic accidents; drivers' licenses; vehicle registration; records to prevent
4 misidentification of persons; Class A, Class B, and unclassified misdemeanor
5 criminal records; and convictions for the following specified misdemeanors:

6 (1) All misdemeanor crimes wherein violence is an element of the
7 offense;

8 (2) All misdemeanor crimes involving the theft of property;

9 (3) All misdemeanor crimes involving the use, abuse, misuse, or
10 possession of dangerous drugs or narcotics;

11 (4) Driving while under the influence of drugs or intoxicants."
12

13 Section 7. *The bifurcation procedures in Sections 1 and 2 of this act*
14 *shall become effective on January 1, 1994 and shall expire on June 30, 1997.*
15

16 SECTION 8. All provisions of this act of a general and permanent nature
17 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
18 Revision Commission shall incorporate the same in the Code.
19

20 SECTION 9. If any provision of this act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 act are declared to be severable.
25

26 SECTION 10. All laws and parts of laws in conflict with this act are
27 hereby repealed.
28

29 /s/ Senator Everett
30
31
32
33
34
35

- 1
- 2
- 3
- 4
- 5