

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: S4/11/03

A Bill

SENATE BILL 969

5 By: Senators Wilkins, Baker, J. Bookout, Bryles, Faris, Gullett, Higginbothom, B. Johnson, G. Jeffress,
6 J. Jeffress, Wilkinson
7 By: Representatives Adams, Clemons, Eason, Hutchinson, C. Johnson, Jones, Judy, Lewellen, Parks,
8 Penix, Thomas, White
9
10

For An Act To Be Entitled

11 AN ACT TO ENHANCE THE SENTENCE OF ANY PERSON
12 COMMITTING A FELONY THAT INVOLVES AN INTOLERABLE
13 ACT; AND FOR OTHER PURPOSES.
14

Subtitle

15 AN ACT TO ENHANCE THE SENTENCE OF ANY
16 PERSON COMMITTING A FELONY THAT INVOLVES
17 AN INTOLERABLE ACT.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 5-4-501 is amended to read as follows:

25 5-4-501. Habitual offenders - Sentencing for felony.

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

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

34 (B) A defendant who is convicted of any felony enumerated
35 in subsection (c) of this section committed after August 31, 1997, and who
36 has previously been convicted of more than one (1) but fewer than four (4)



1 felonies not enumerated in subsection (c) of this section or who has been
2 found guilty of more than one (1) but fewer than four (4) felonies not
3 enumerated in subsection (c) of this section; ~~or~~

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

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

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

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

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

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

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

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

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

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

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

35 (A) A defendant who is convicted of a felony other than
36 those enumerated in subsections (c) and (d) of this section committed after

1 June 30, 1993, and who has previously been convicted of four (4) or more
2 felonies or who has been found guilty of four (4) or more felonies;

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

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

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

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

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

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

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

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

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

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

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

36 (c)(1) A defendant who is convicted of a serious felony involving

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

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

13 (A) Any of the following felonies:

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

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

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

18 (iv) Aggravated robbery, § 5-12-103;

19 (v) Rape, § 5-14-103;

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

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

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

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

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

32 (ii)(a) If the defendant is found guilty of the
 33 serious felony involving violence, or an intolerable act, the trial court,
 34 out of the hearing of the jury, shall hear evidence of whether the defendant
 35 has pleaded guilty or nolo contendere to, or been found guilty of, a prior
 36 serious felony involving violence or an intolerable act and shall determine

1 the number of such prior felony convictions, if any.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (A) Any of the following felonies:

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

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

9 (iii) Kidnapping, § 5-11-102;

10 (iv) Aggravated robbery, § 5-12-103;

11 (v) Rape, § 5-14-103;

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

13 (vii) Terroristic act, § 5-13-310;

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

15 (ix) Violation of a minor in the first degree, § 5-
16 14-120;

17 (x) Domestic battering in the first degree, § 5-26-
18 303;

19 (xi) Unlawful discharge of a firearm from a vehicle,
20 § 5-74-107;

21 (xii) Criminal use of prohibited weapons, § 5-73-
22 104, involving activities making it a Class B felony; or

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

25 (a) Capital murder, § 5-10-101;

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

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

28 (d) Kidnapping, § 5-11-102;

29 (e) Aggravated robbery, § 5-12-103;

30 (f) Rape, § 5-14-103;

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

32 or

33 (h) Domestic battering in the first degree, §
34 5-26-303; or

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

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

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

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

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

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

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

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

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

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

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

36 (f) For the purposes of determining whether a defendant has previously

1 been convicted of a serious felony involving violence or a felony involving
 2 violence under subsections (c) and (d) of this section, or a felony involving
 3 an intolerable act, the entry of a plea of guilty or nolo contendere or a
 4 finding of guilt by a court to a felony enumerated in subsections (c) and (d)
 5 of this section, respectively, as a result of which a court places the
 6 defendant on a suspended imposition of sentence, a suspended sentence, or
 7 probation, or sentences the defendant to the Department of Correction, shall
 8 be considered a previous felony conviction.

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

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

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

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

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 31 /s/ Wilkins
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