

As Engrossed: 2/12/93 4/7/93

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

A Bill

ACT 1189 OF 1993
HOUSE BILL 1432

4 **By: Representatives Jones, Molinaro, Wyrick, Young, von Grep, Bryant, Sheid and Henry**

5

6

7

For An Act To Be Entitled

8 "AN ACT TO AMEND CURRENT ARKANSAS CRIMINAL LAW TO PROVIDE
9 FOR SAFER SCHOOLS BY PROVIDING FOR INCREASED PENALTIES FOR
10 CRIMES COMMITTED ON OR NEAR SCHOOLS OR AGAINST TEACHERS OR
11 OTHER SCHOOL EMPLOYEES; AND FOR OTHER PURPOSES."

12

13

Subtitle

14 "ARKANSAS SAFE SCHOOLS ACT."

15

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

17

18 SECTION 1. General Legislative Findings and Declaration.

19 (a) The General Assembly of the State of Arkansas finds that the State
20 of Arkansas is experiencing an increase in violent crime committed by school
21 age juveniles and the growth of street gangs made up largely of school age
22 juveniles. The General Assembly of the State of Arkansas further finds that
23 the number of school related crimes is increasing.

24 (b) It is the intent of the General Assembly of the State of Arkansas
25 to insure the safest possible learning environment for our students, teachers
26 and other school employees.

27

28 SECTION 2. Arkansas Code Annotated 5-10-101 is amended to read as
29 follows:

30 "5-10-101. Capital murder. (a) A person commits capital murder if:

31 (1) Acting alone or with one (1) or more other persons, he
32 commits or attempts to commit rape, kidnapping, vehicular piracy, robbery,
33 burglary, a felony violation of the Uniform Controlled Substances Act, §§
34 5-64-101 - 5-64-608, involving an actual delivery of a controlled substance,
35 or escape in the first degree, and in the course of and in furtherance of the
36 felony, or in immediate flight therefrom, he or an accomplice causes the death

1 of any person under circumstances manifesting extreme indifference to the
2 value of human life; or

3 (2) Acting alone or with one (1) or more other persons, he
4 commits or attempts to commit arson, and in the course of and in furtherance
5 of the felony or in immediate flight therefrom, he or an accomplice causes the
6 death of any person; or

7 (3) With the premeditated and deliberated purpose of causing the
8 death of any law enforcement officer, jailer, prison official, firefighter,
9 judge or other court official, probation officer, parole officer, or any
10 military personnel, teacher or school employee, when such person is acting in
11 line of duty, he causes the death of any person; or

12 (4) With the premeditated and deliberated purpose of causing the
13 death of another person, he causes the death of any person; or

14 (5) With the premeditated and deliberated purpose of causing the
15 death of the holder of any public office filled by election or appointment or
16 a candidate for public office, he causes the death of any person; or

17 (6) While under sentence of life imprisonment, life imprisonment
18 without parole, or death, he purposely causes the death of another person
19 after premeditation and deliberation; or

20 (7) Pursuant to an agreement that he cause the death of another
21 person in return for anything of value, he causes the death of any person; or

22 (8) He enters into an agreement whereby one person is to cause
23 the death of another person in return for anything of value, and the person
24 hired, pursuant to the agreement, causes the death of any person; or

25 (9) Under circumstances manifesting extreme indifference to the
26 value of human life, he knowingly causes the death of a person fourteen (14)
27 years of age or younger at the time the murder was committed provided that the
28 defendant was eighteen (18) years of age or older at the time the murder was
29 committed. It shall be an affirmative defense to any prosecution under this
30 subdivision arising from the failure of the parent, guardian, or person
31 standing in loco parentis to provide specified medical or surgical treatment,
32 that the parent, guardian, or person standing in loco parentis relied solely
33 on spiritual treatment through prayer in accordance with the tenets and
34 practices of an established church or religious denomination of which he is a
35 member.

1 (b) It is an affirmative defense to any prosecution under subsection
2 (a) (1) of this section for an offense in which the defendant was not the only
3 participant that the defendant did not commit the homicidal act or in any way
4 solicit, command, induce, procure, counsel, or aid its commission.

5 (c) Capital murder is punishable by death or life imprisonment without
6 parole pursuant to §§ 5-4-601 - 5-4-605 and 5-4-607 and 5-4-608. For all
7 purposes other than disposition under §§ 5-4-101 - 5-4-104, 5-4-201 - 5-4-204,
8 5-4-301 - 5-4-308, 5-4-310 - 5-4-311, 5-4-401 - 5-4-404, 5-4-501 - 5-4-505,
9 5-4-601 - 5-4-605, 5-4-607 and 5-4-608, capital murder is a Class Y felony."
10

11 SECTION 3. Arkansas Code Annotated 5-13-301 is amended to read as
12 follows:

13 "5-13-301. Terroristic threatening.

14 (a) A person commits the offense of terroristic threatening in the first
15 degree if:

16 (1) With the purpose of terrorizing another person, he threatens
17 to cause death or serious physical injury or substantial property damage to
18 another person.

19 (2) With the purpose of terrorizing another person, he threatens
20 to cause physical injury or property damage to a teacher or other school
21 employee acting in the line of duty.

22 (3) Terroristic threatening in the first degree is a Class D
23 felony.

24 (b) (1) A person commits the offense of terroristic threatening in
25 the second degree if, with the purpose of terrorizing another person, he
26 threatens to cause physical injury or property damage to another person.

27 (2) Terroristic threatening in the second degree is a Class B
28 misdemeanor."

29

30 SECTION 4. Arkansas Code Annotated 5-73-119 is amended to read as
31 follows:

32 "5-73-119. Handguns - Possession by minor or possession on school
33 property.

34 (a) (1) (A) No person in this state under the age of eighteen (18)
35 years shall possess a handgun.

1 (B) Violation of *subsection (a)(1)(A)* shall be a Class A
2 misdemeanor.

3 (C) Any person who is guilty of a subsequent violation of
4 *subsection (a)(1)(A)*, is guilty of a Class D felony.

5 (2) (A) No person in this state shall possess a handgun upon
6 the property of the public schools or in or upon any school bus or designated
7 bus stop as identified on the route lists published by the school district
8 each year.

9 (B) *Violation of subsection (a)(2)(A) shall be a Class D*
10 *felony, and no sentence imposed for violation thereof shall be suspended or*
11 *probated or treated as a first offense under § 16-93-301 et seq.*

12 (b) A handgun is a firearm capable of firing rimfire ammunition or
13 centerfire ammunition, and which is designed or constructed to be fired with
14 one hand.

15 (c) It is a defense to a prosecution under this section that at the
16 time of the act of possessing a handgun if:

17 (1) The person is in his own dwelling or place of business or on
18 property in which he has a possessory or proprietary interest; or

19 (2) The person is a law enforcement officer, prison guard, or
20 member of the armed forces, acting in the course and scope of his official
21 duties; or

22 (3) The person is assisting a law enforcement officer, prison
23 guard, or member of the armed forces acting in the course and scope of
24 official duties pursuant to the direction or request of the law enforcement
25 officer, prison guard, or member of the armed forces; or

26 (4) The person is a licensed security guard acting in the course
27 and scope of his duties; or

28 (5) The person is hunting game with a handgun which may be hunted
29 with a handgun under rules and regulations of the Arkansas Game and Fish
30 Commission or is enroute to or from a hunting area for the purpose of hunting
31 game with a handgun; or

32 (6) The person is a certified law enforcement officer; or

33 (7) The person is on a journey unless the person is eighteen (18)
34 years old or less; or

35 (8) The person is participating in a hunting safety course

1 sponsored by the Arkansas Game and Fish Commission; or

2 (9) The person is participating in a school-approved educational
3 course or sporting activity involving the use of firearms."

4

5 SECTION 5. Arkansas Code Annotated 9-27-318 is amended to read as
6 follows:

7 "9-27-318. Waiver and transfer to circuit court.

8 (a) If the prosecuting attorney has the discretion to file charges in
9 circuit court for any act alleged to have been committed by a juvenile the
10 prosecutor may file any other criminal charges that arise out of the same act
11 or course of conduct in the same circuit court case *if after a hearing before*
12 *the Juvenile Court a motion to transfer is so ordered*, otherwise waiver of
13 juvenile court jurisdiction and transfer to a circuit court is not available
14 when a case involves a juvenile:

15 (1) Less than age fourteen (14) years at the time the alleged
16 delinquent act occurred;

17 (2) Less than age eighteen (18) years at the time the alleged
18 delinquent act occurred and the alleged act would not constitute a felony if
19 committed by an adult; or

20 (3) Age fourteen (14) years or age fifteen (15) years and the
21 alleged act, if committed by an adult, would constitute a misdemeanor or a
22 felony, other than those felonies specifically enumerated in subdivision
23 (b)(1) of this section.

24 (b) (1) When a case involves a juvenile age fourteen (14) years or
25 fifteen (15) years at the time the alleged delinquent act occurred, the
26 prosecuting attorney has the discretion to file charges in circuit court for
27 an alleged act which constitutes capital murder, murder in the first degree,
28 murder in the second degree, kidnapping in the first degree, aggravated
29 robbery, rape, or battery in the first degree possession of a handgun on
30 school property, or aggravated assault committed with a deadly weapon.

31 (2) The circuit court shall hold a hearing within ninety (90)
32 days of the filing of charges to determine whether to retain jurisdiction of
33 the juvenile in circuit court or to waive jurisdiction and transfer the case
34 to juvenile court.

35 (c) When a case involves a juvenile age sixteen (16) years or above at

1 the time the alleged delinquent act occurred and the alleged act would
2 constitute a felony if committed by an adult, the prosecuting attorney has the
3 discretion to file a petition in juvenile court alleging delinquency or to
4 file charges in circuit court and to prosecute as an adult.

5 (d) Upon the motion of the court or of any party, the judge of the
6 court in which a delinquency petition or criminal charges have been filed
7 shall conduct a hearing to determine whether to retain jurisdiction or to
8 transfer the case to another court having jurisdiction.

9 (e) In making the decision to retain jurisdiction or to transfer the
10 case, the court shall consider the following factors:

11 (1) The seriousness of the offense, and whether violence was
12 employed by the juvenile in the commission of the offense;

13 (2) Whether the offense is part of a repetitive pattern of
14 adjudicated offenses which would lead to the determination that the juvenile
15 is beyond rehabilitation under existing rehabilitation programs, as evidenced
16 by past efforts to treat and rehabilitate the juvenile and the response to
17 such efforts; and

18 (3) The prior history, character traits, mental maturity, and any
19 other factor which reflects upon the juvenile's prospects for rehabilitation.

20 (f) Upon a finding by clear and convincing evidence that a juvenile
21 should be tried as an adult, the court shall enter an order to that effect.

22 (g) If the case is transferred to another court, any bail or appearance
23 bond given for the appearance of the juvenile shall continue in effect in the
24 court to which the case is transferred.

25 (h) Any party may appeal from an order granting or denying the transfer
26 of a case from one court to another court having jurisdiction over the
27 matter."

28

29 SECTION 6. Arkansas Code Annotated 5-64-402 is amended to read as
30 follows:

31 "5-64-402. Offenses relating to records, maintaining premises, etc.

32 (a) It is unlawful for any person:

33 (1) To refuse or fail to make, keep, or furnish any record,
34 notification, order form, statement, invoice, or information required under
35 subchapters 1-6 of this chapter;

1 (2) To refuse an entry into any premises for any inspection
2 authorized by this chapter; or

3 (3) Knowingly to keep or maintain any store, shop, warehouse,
4 dwelling, building, or other structure or place or premise, which is resorted
5 to by persons for the purpose of using or obtaining these substances , or
6 which is used for keeping them in violation of subchapters 1-6 of this
7 chapter.

8 (b) Any person who violates this section is guilty of a Class D
9 felony except that violation of this section is a Class B felony if the
10 violation is committed on or within one thousand (1,000) feet of the real
11 property of a certified Drug Free Zone.

12 (c) The following are certified Drug Free Zones:

13 (1) A city or state park;

14 (2) A public or private elementary or secondary school, public
15 vocational school, or private or public college or university;

16 (3) A community or recreation center;

17 (4) A Boys Club, Girls Club, YMCA, or YWCA;

18 (5) A skating rink or video arcade.

19 (d) For the purpose of this section, minor means any person under
20 eighteen (18) years of age."

21

22 SECTION 7. Arkansas Code Annotated 5-73-104 is amended to read as
23 follows:

24 "5-73-104. Criminal use of prohibited weapons.

25 (a) A person commits the offense of criminal use of prohibited weapons
26 if, except as authorized by law, he uses, possesses, makes, repairs, sells, or
27 otherwise deals in any bomb, machine gun, sawed-off shotgun or rifle, firearm
28 specially made or specially adapted for silent discharge, metal knuckles, or
29 other implement for the infliction of serious physical injury or death which
30 serves no common lawful purpose.

31 (b) It is a defense to a prosecution under this section that:

32 (1) The person was a law enforcement officer, prison guard, or
33 member of the armed forces acting in the course and scope of his duty at the
34 time he used or possessed the prohibited weapon; or

35 (2) The defendant used, possessed, made, repaired, sold, or

1 otherwise dealt in any of the above enumerated articles under circumstances
2 negating any likelihood that the weapon could be used unlawfully.

3 (c) Criminal use of prohibited weapons is a Class B felony if the
4 weapon is a bomb, machine gun, or firearm specially made or specially adapted
5 for silent discharge. Otherwise, it is a Class D felony."
6

7 SECTION 8. All provisions of this act of a general and permanent nature
8 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
9 Revision Commission shall incorporate the same in the Code.
10

11 SECTION 9. If any provision of this act or the application thereof to
12 any person or circumstance is held invalid, such invalidity shall not affect
13 other provisions or applications of the act which can be given effect without
14 the invalid provision or application, and to this end the provisions of this
15 act are declared to be severable.
16

17 SECTION 10. All laws and parts of laws in conflict with this act are
18 hereby repealed.
19

20 /s/M. Jones, et al
21

22 APPROVED: 4/16/93
23
24
25
26
27
28
29
30
31
32
33
34
35

- 1
- 2
- 3
- 4
- 5
- 6
- 7