

1 **State of Arkansas**  
2 **80th General Assembly**  
3 **Regular Session, 1995**

# **A Bill**

**ACT 1011 OF 1995**  
**HOUSE BILL 1277**

4 **By: Representatives Ferrell, Young, Madison, Ray, Hall, Bush, T. Smith, Wilkinson,**  
5 **Sheppard, Ammons, Critcher, Stalnaker, Hudson, and Angel**  
6 **Senators Keet, Hardin, Gwatney, Webb, Brown, and Russ**

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## **For An Act To Be Entitled**

10 *"AN ACT TO AMEND ARKANSAS CODE § 5-4-501 TO REQUIRE*  
11 *HABITUAL OFFENDERS OF VIOLENT CRIMES IN ARKANSAS TO SERVE*  
12 *MANDATORY SENTENCES OR LIFE FOR COMMITTING TWO (2) SERIOUS*  
13 *VIOLENT FELONIES AND TO SERVE LIFE IN PRISON OR MANDATORY*  
14 *MINIMUM SENTENCES FOR CERTAIN VIOLENT FELONY CRIMES*  
15 *COMMITTED THREE (3) TIMES; TO AMEND ARKANSAS CODE*  
16 *§ 16-93-1302 TO PROVIDE OFFENDERS OF SERIOUS VIOLENT*  
17 *FELONIES WITH PAROLE ELIGIBILITY ONLY AFTER AGE FIFTY-FIVE*  
18 *(55); AND FOR OTHER PURPOSES."*

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## **Subtitle**

21 *"TO REQUIRE HABITUAL OFFENDERS OF TWO*  
22 *SERIOUS VIOLENT FELONIES TO SERVE*  
23 *MANDATORY SENTENCES OR LIFE AND FOR 3*  
24 *TIME OFFENDERS OF VIOLENT FELONIES TO*  
25 *SERVE LIFE IN PRISON OR MINIMUM PRISON*  
26 *TERMS."*

27

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

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

31 *"5-4-501. Habitual offenders - Sentencing for felony.*

32 *(a) A defendant who is convicted of a felony other than those*  
33 *enumerated in subsections (c) and (d) committed after June 30, 1993, and who*  
34 *has previously been convicted of more than one (1) but less than four (4)*  
35 *felonies, or who has been found guilty of more than one (1) but less than four*  
36 *(4) felonies, may be sentenced to an extended term of imprisonment as follows:*

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

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

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

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

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

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

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

17           (b) A defendant who is convicted of a felony other than those  
18 enumerated in subsections (c) and (d) committed after June 30, 1993, and who  
19 has previously been convicted of four (4) or more felonies or who has been  
20 found guilty of four (4) or more felonies, may be sentenced to an extended  
21 term of imprisonment as follows:

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

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

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

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

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

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

35           (7) For a conviction of an unclassified felony punishable by life

1 imprisonment, not less than ten (10) years nor more than fifty (50) years, or  
2 life.

3           (c) (1) A defendant who is convicted of a serious felony involving  
4 violence enumerated below and who has previously been convicted on one (1) or  
5 more separate and distinct prior occasions of one (1) or more of the serious  
6 felonies involving violence enumerated below shall be sentenced to  
7 imprisonment, without eligibility of parole or community punishment transfer,  
8 for term of not less than forty (40) years nor more than eighty (80) years, or  
9 for life.

10           (2) For the purposes of this subsection, a serious felony  
11 involving violence shall mean any of the following felonies enumerated as  
12 follows: Murder in the first degree, § 5-10-102; Murder in the second degree,  
13 § 5-10-103; Kidnapping, involving activities making it a Y felony, § 5-11-102;  
14 Aggravated robbery, § 5-12-103; Rape, § 5-14-103; Terroristic act, involving  
15 activities making it a Y felony, § 5-13-310; Causing a catastrophe,  
16 § 5-38-202; or a conviction of a comparable serious felony involving violence  
17 from another jurisdiction.

18           (3) After reaching the verdict of guilty on a serious felony  
19 involving violence, the same jury or the same judge sitting without a jury  
20 shall sit again in order to hear additional evidence determined pursuant to  
21 the procedures outlined in § 5-4-502, and if it is then determined beyond a  
22 reasonable doubt that in fact the defendant has previously pleaded guilty,  
23 nolo contendere, or been found guilty of a prior serious felony involving  
24 violence, then the defendant shall be sentenced in accordance with the  
25 provisions of subdivision (c) (1) of this section. The determination of  
26 whether a felony conviction from another jurisdiction is comparable to one of  
27 the enumerated serious felonies involving violence under Arkansas criminal law  
28 shall lie within the discretion of the trial judge at the time of sentencing.

29           (d) (1) A defendant who is convicted of a felony involving violence  
30 enumerated below and who has previously been convicted on two (2) or more  
31 separate and distinct prior occasions of one (1) or more of the felonies  
32 involving violence enumerated below shall be sentenced to an extended term of  
33 imprisonment, without eligibility for parole or community punishment transfer,  
34 as follows:

35           (A) For a conviction of a Class Y felony, a term of not

1 less than life in prison;

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

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

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

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

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

14 (2) For the purposes of this section, a felony involving violence  
15 shall mean any of the following felonies enumerated as follows: Murder in the  
16 first degree, § 5-10-102; Murder in the second degree, § 5-10-103; Kidnapping,  
17 § 5-11-102; Aggravated robbery, § 5-12-103; Rape, § 5-14-103; Battery in the  
18 first degree, § 5-13-201; Terroristic act, § 5-13-310; Unlawful discharge of a  
19 firearm from a vehicle, § 5-74-107; Criminal use of prohibited weapons,  
20 involving activities making it a B felony, § 5-73-104; A felony attempt,  
21 solicitation, or conspiracy to commit Capital murder, Murder in the first  
22 degree, Murder in the second degree, Kidnapping, Aggravated robbery, Rape, or  
23 Battery in the first degree; Sexual abuse in the first degree, § 5-14-108;  
24 Violation of a minor in the first degree, § 5-14-120; or a conviction of a  
25 comparable felony involving violence from another jurisdiction.

26 (3) After reaching the verdict of guilty on a felony involving  
27 violence, the same jury or the same judge sitting without a jury shall sit  
28 again in order to hear additional evidence determined pursuant to the  
29 procedures outlined in § 5-4-502, and if it is then determined beyond a  
30 reasonable doubt that in fact the defendant has previously pleaded guilty,  
31 nolo contendere, or been found guilty of two or more prior felonies involving  
32 violence, then the defendant shall be sentenced in accordance with the  
33 provisions of subdivision (d) (1) of this section. The determination of  
34 whether a felony conviction from another jurisdiction is comparable to one of  
35 the enumerated felonies involving violence under Arkansas criminal law shall

1 lie within the discretion of the trial judge at the time of sentencing.

2       (e) For the purpose of determining whether a defendant has previously  
3 been convicted or found guilty of two (2) or more felonies, a conviction or  
4 finding of guilt of burglary and of the felony that was the object of the  
5 burglary shall be considered a single felony conviction or finding of guilt. A  
6 conviction or finding of guilt of an offense that was a felony under the law  
7 in effect prior to January 1, 1976, shall be considered a previous felony  
8 conviction or finding of guilt.

9       (f) For the purposes of determining whether a defendant has 'previously  
10 been convicted' of a serious felony involving violence or felony involving  
11 violence under subsections (c) and (d) of this section, the entry of a plea of  
12 guilty or nolo contendere or a finding of guilt by a court to a felony  
13 enumerated in subsections (c) and (d), respectively, and as a result of which  
14 a court places the defendant on a suspended imposition of sentence, a  
15 suspended sentence, probation, or sentences the defendant to the Department of  
16 Correction shall be considered a previous felony conviction. Any defendant  
17 deemed eligible to be sentenced under provisions of both subsections (c) and  
18 (d) this section shall be sentenced only under subsection (d) of this section.

19       (g) In the event the provisions of subsections (c) or (d), or both, are  
20 held invalid by a court, the defendants case shall remanded to the trial court  
21 for resentencing of the defendant under the provisions of subsections (a) and  
22 (b) of this section."

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24       SECTION 2. Arkansas Code § 16-93-1302 is amended to add an additional  
25 subsection (f) to read as follows:

26       "(f) Inmates who are sentenced under the provisions of subsections (c)  
27 or (d) of Arkansas Code § 5-4-501 for serious violent felonies or felonies  
28 involving violence may be considered eligible for parole or for community  
29 punishment transfer upon reaching regular parole or transfer eligibility, but  
30 only after reaching a minimum age of fifty-five (55) years."

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32       SECTION 3. All provisions of this act of a general and permanent nature  
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
34 Revision Commission shall incorporate the same in the Code.

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1 SECTION 4. If any provision of this act or the application thereof to  
2 any person or circumstance is held invalid, such invalidity shall not affect  
3 other provisions or applications of the act which can be given effect without  
4 the invalid provision or application, and to this end the provisions of this  
5 act are declared to be severable.

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7 SECTION 5. All laws and parts of laws in conflict with this act are  
8 hereby repealed.

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*/s/Rep. Ferrell, et al*

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APPROVED: 4-7-95

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***As Engrossed: 2/15/95 2/17/95 4/4/95***

**HB 1277**

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