

1 **State of Arkansas**
2 **80th General Assembly**
3 **Regular Session, 1995**
4 **By: Representative K. Wood**

A Bill

ACT 657 OF 1995
HOUSE BILL 1565

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 5-1-110 TO
9 AUTHORIZE SEPARATE CONVICTIONS AND SENTENCES FOR CAPITAL
10 FELONY AND FIRST DEGREE FELONY MURDER AND THEIR UNDERLYING
11 FELONIES, FOR CONTINUING CRIMINAL ENTERPRISE AND ITS
12 PREDICATE FELONIES; AND FOR OTHER PURPOSES."

Subtitle

15 "TO AUTHORIZE SEPARATE CONVICTIONS AND
16 SENTENCES IN CERTAIN CASES"

17
18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Intent. It is the intent of the legislature, pursuant to
21 Missouri v. Hunter, 459 U. S. 359 (1983), to explicitly authorize separate
22 convictions, sentences, and cumulative punishments for the offenses specified
23 in Section 2 of this act. Cases such as McClendon v. State, 295 Ark. 303, 748
24 S. W. 2d 641 (1988), which prohibit separate convictions, sentences, and
25 cumulative punishments for such offenses are hereby overruled.

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27 SECTION 2. Arkansas Code Annotated § 5-1-110 is amended to read as
28 follows:

29 "5-1-110. Conduct constituting more than one offense - Prosecution.

30 (a) When the same conduct of a defendant may establish the commission
31 of more than one (1) offense, the defendant may be prosecuted for each such
32 offense. He may not, however, be convicted of more than one offense if:

33 (1) One offense is included in the other, as defined in
34 subsection (b) of this section; or

35 (2) One offense consists only of a conspiracy, solicitation, or
36 attempt to commit the other; or

1 (3) Inconsistent findings of fact are required to establish the
2 commission of the offenses; or

3 (4) The offenses differ only in that one is defined to prohibit a
4 designated kind of conduct generally and the other to prohibit a specific
5 instance of that conduct; or

6 (5) The conduct constitutes an offense defined as a continuing
7 course of conduct and the defendant's course of conduct was uninterrupted,
8 unless the law provides that specific periods of such conduct constitute
9 separate offenses.

10 (b) A defendant may be convicted of one offense included in another
11 offense with which he is charged. An offense is so included if:

12 (1) It is established by proof of the same or less than all the
13 elements required to establish the commission of the offense charged; or

14 (2) It consists of an attempt to commit the offense charged or to
15 commit an offense otherwise included within it; or

16 (3) It differs from the offense charged only in the respect that
17 a less serious injury or risk of injury to the same person, property, or
18 public interest or a lesser kind of culpable mental state suffices to
19 establish its commission.

20 (c) The court shall not be obligated to charge the jury with respect to
21 an included offense unless there is a rational basis for a verdict acquitting
22 the defendant of the offense charged and convicting him of the included
23 offense.

24 (d) Notwithstanding any provision of law to the contrary, separate
25 convictions and sentences are authorized for capital felony murder,
26 § 5-10-101, and any felonies utilized as underlying felonies for the murder,
27 first degree felony murder, § 5-10-102, and any felonies utilized as
28 underlying felonies for the murder, and continuing criminal enterprise,
29 § 5-64-414, and any of the predicate felonies utilized to prove the continuing
30 criminal enterprise. With respect to all of the aforementioned offenses, the
31 trial judge shall, pursuant to Arkansas Code Annotated § 5-4-403, have the
32 discretion whether to order that the multiple terms of imprisonment run
33 concurrently or consecutively."

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35 SECTION 3. All provisions of this act of a general and permanent nature

1 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
2 Revision Commission shall incorporate the same in the Code.

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

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

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13 APPROVED: 3-17-95

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