

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 86th General Assembly  
3 Regular Session, 2007

# A Bill

SENATE BILL 288

4  
5 By: Senator Broadway  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO CLARIFY THAT A HABITUAL OFFENDER MAY BE  
10 SENTENCED TO PAY ANY FINE AUTHORIZED BY LAW; AND  
11 FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 TO CLARIFY THAT A HABITUAL OFFENDER MAY  
15 BE SENTENCED TO PAY ANY FINE AUTHORIZED  
16 BY LAW.  
17

18  
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

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

22 5-4-501. Habitual offenders - Sentencing for felony.

23 (a)(1) A defendant meeting the following criteria may be sentenced to  
24 pay any fine authorized by law for the felony conviction and to an extended  
25 term of imprisonment as set forth in subdivision (a)(2) of this section:

26 (A) A defendant who:

27 (i) Is convicted of a felony other than those  
28 enumerated in subsections (c) and (d) of this section committed after June  
29 30, 1993; and

30 (ii) Has previously been convicted of more than one  
31 (1) felony but fewer than four (4) felonies or who has been found guilty of  
32 more than one (1) but fewer than four (4) felonies;

33 (B) A defendant who:

34 (i) Is convicted of any felony enumerated in  
35 subsection (c) of this section committed after August 31, 1997; and

36 (ii) Has previously been convicted of more than one



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

4 (C) A defendant who:

5 (i) Is convicted of any felony enumerated in  
 6 subsection (d) of this section committed after August 31, 1997; and

7 (ii) Has previously been convicted of more than one  
 8 (1) felony but fewer than four (4) felonies not enumerated in subsection (d)  
 9 of this section or has been found guilty of more than one (1) but fewer than  
 10 four (4) felonies not enumerated in subsection (d) of this section.

11 (2) The extended term of imprisonment for a defendant described  
 12 in subdivision (a)(1) of this section is as follows:

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

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

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

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

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

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

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

31 (b)(1) A defendant meeting the following criteria may be sentenced to  
 32 pay any fine authorized by law for the felony conviction and to an extended  
 33 term of imprisonment as set forth in subdivision (b)(2) of this section:

34 (A) A defendant who:

35 (i) Is convicted of a felony other than a felony  
 36 enumerated in subsections (c) and (d) of this section committed after June

1 30, 1993; and

2 (ii) Has previously been convicted of four (4) or  
 3 more felonies or who has been found guilty of four (4) or more felonies;

4 (B) A defendant who:

5 (i) Is convicted of any felony enumerated in  
 6 subsection (c) of this section committed after June 30, 1997; and

7 (ii) Has previously been convicted of four (4) or  
 8 more felonies not enumerated in subsection (c) of this section or who has  
 9 been found guilty of four (4) or more felonies not enumerated in subsection  
 10 (c) of this section; or

11 (C) A defendant who:

12 (i) Is convicted of any felony enumerated in  
 13 subsection (d) of this section committed after June 30, 1997; and

14 (ii) Has previously been convicted of four (4) or  
 15 more felonies not enumerated in subsection (d) of this section or who has  
 16 been found guilty of four (4) or more felonies not enumerated in subsection  
 17 (d) of this section.

18 (2) The extended term of imprisonment for a defendant described  
 19 in subdivision (b)(1) of this section is as follows:

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

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

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

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

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

31 (F) For a conviction of an unclassified felony punishable  
 32 by less than life imprisonment, a term of imprisonment not more than two (2)  
 33 times the maximum sentence for the unclassified felony offense; and

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

1 (c)(1) Except as provided in subdivision (c)(3) of this section, a  
 2 defendant who is convicted of a serious felony involving violence enumerated  
 3 in subdivision (c)(2) of this section and who has previously been convicted  
 4 of one (1) or more of the serious felonies involving violence enumerated in  
 5 subdivision (c)(2) of this section may be sentenced to pay any fine  
 6 authorized by law for the serious felony involving violence conviction and  
 7 shall be sentenced:

8 (A) To imprisonment for a term of not less than forty (40)  
 9 years nor more than eighty (80) years, or life; and

10 (B) Without eligibility for parole or community correction  
 11 transfer except under § 16-93-1302.

12 (2) As used in this subsection, "serious felony involving  
 13 violence" means:

14 (A) Any of the following felonies:

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

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

17 (iii) Kidnapping, § 5-11-102, involving an activity  
 18 making it a Class Y felony;

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

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

22 (vi) Rape, § 5-14-103;

23 (vii) Sexual assault in the first degree, § 5-14-  
 24 124; or

25 (viii) Causing a catastrophe, § 5-38-202(a); or

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

28 (3) A defendant who is convicted of rape, § 5-14-103, or sexual  
 29 assault in the first degree, § 5-14-124, involving a victim less than  
 30 fourteen (14) years of age and who has previously been convicted of one (1)  
 31 or more of the serious felonies involving violence enumerated in subdivision  
 32 (c)(2) of this section may be sentenced to pay any fine authorized by law for  
 33 the rape or sexual assault in the first degree conviction and shall be  
 34 sentenced to life in prison without the possibility of parole.

35 (4)(A) The following procedure governs a trial at which a  
 36 sentence to an extended term of imprisonment is sought pursuant to this

1 subsection:

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

6 (ii)(a) If the defendant is found guilty of the  
7 serious felony involving violence, out of the hearing of the jury the trial  
8 court shall hear evidence of whether the defendant has pleaded guilty or nolo  
9 contendere to or been found guilty of a prior serious felony involving  
10 violence and shall determine the number of prior serious felony involving  
11 violence convictions, if any.

12 (b) The defendant has the right to hear and  
13 controvert evidence described in subdivision (c)(4)(A)(ii)(a) of this section  
14 and to offer evidence in his or her support;

15 (iii)(a) The trial court shall then instruct the  
16 jury as to the number of prior convictions for a serious felony involving  
17 violence and the statutory sentencing range.

18 (b) The jury may be advised as to the nature  
19 of a prior serious felony involving violence conviction and the date and  
20 place of a prior serious felony involving violence conviction; and

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

23 (B) The determination of whether a felony conviction from  
24 another jurisdiction is comparable to an enumerated serious felony involving  
25 violence under Arkansas criminal law lies within the discretion of the trial  
26 judge at the time of sentencing.

27 (d)(1) A defendant who is convicted of a felony involving violence  
28 enumerated in subdivision (d)(2) of this section and who has previously been  
29 convicted of two (2) or more of the felonies involving violence enumerated in  
30 subdivision (d)(2) of this section may be sentenced to pay any fine  
31 authorized by law for the felony involving violence conviction and shall be  
32 sentenced to an extended term of imprisonment without eligibility for parole  
33 or community correction transfer except under § 16-93-1302 as follows:

34 (A) For a conviction of a Class Y felony, a term of ~~of~~  
35 imprisonment of not less than life in prison;

36 (B) For a conviction of a Class A felony, a term of ~~of~~

1 imprisonment of not less than forty (40) years nor more than life in prison;

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

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

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

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

15 (2) As used in this subsection, "felony involving violence"  
 16 means:

17 (A) Any of the following felonies:

- 18 (i) Murder in the first degree, § 5-10-102;
- 19 (ii) Murder in the second degree, § 5-10-103;
- 20 (iii) Kidnapping, § 5-11-102;
- 21 (iv) Aggravated robbery, § 5-12-103;
- 22 (v) Rape, § 5-14-103;
- 23 (vi) Battery in the first degree, § 5-13-201;
- 24 (vii) Terroristic act, § 5-13-310;
- 25 (viii) Sexual abuse in the first degree, § 5-14-108
- 26 [repealed];
- 27 (ix) Violation of a minor in the first degree, § 5-
- 28 14-120 [repealed];
- 29 (x) Sexual assault in the first degree, § 5-14-124;
- 30 (xi) Sexual assault in the second degree, § 5-14-
- 31 125;
- 32 (xii) Domestic battering in the first degree, § 5-
- 33 26-303;
- 34 (xiii) Unlawful discharge of a firearm from a
- 35 vehicle, § 5-74-107;
- 36 (xiv) Criminal use of prohibited weapons, § 5-73-

1 104, involving an activity making it a Class B felony; or

2 (xv) A felony attempt, solicitation, or conspiracy  
 3 to commit:

- 4 (a) Capital murder, § 5-10-101;
- 5 (b) Murder in the first degree, § 5-10-102;
- 6 (c) Murder in the second degree, § 5-10-103;
- 7 (d) Kidnapping, § 5-11-102;
- 8 (e) Aggravated robbery, § 5-12-103;
- 9 (f) Rape, § 5-14-103;
- 10 (g) Battery in the first degree, § 5-13-201;

11 or

12 (h) Domestic battering in the first degree, §  
 13 5-26-303; or

14 (B) A conviction of a comparable felony involving violence  
 15 from another jurisdiction.

16 (3)(A) The following procedure governs a ~~trials~~ trial at which a  
 17 sentence to an extended term of imprisonment is sought pursuant to this  
 18 subsection:

19 (i) The jury shall first hear all evidence relevant  
 20 to the felony involving violence with which the defendant is currently  
 21 charged and shall retire to reach a verdict of guilt or innocence on this  
 22 charge;

23 (ii)(a) If the defendant is found guilty of the  
 24 felony involving violence, out of the hearing of the jury the trial court  
 25 shall hear evidence of whether the defendant has pleaded guilty or nolo  
 26 contendere to or been found guilty of two (2) or more prior felonies  
 27 involving violence and shall determine the number of prior felony involving  
 28 violence convictions, if any.

29 (b) The defendant has the right to hear and  
 30 controvert evidence described in subdivision (d)(3)(A)(ii)(a) of this section  
 31 and to offer evidence in his or her support;

32 (iii)(a) The trial court shall then instruct the  
 33 jury as to the number of prior felony involving violence convictions and the  
 34 statutory sentencing range.

35 (b) The jury may be advised as to the nature  
 36 of a prior felony involving violence conviction and the date and place of a

1 prior felony involving violence conviction; and

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

4 (B) The determination of whether a felony conviction from  
5 another jurisdiction is comparable to an enumerated felony involving violence  
6 under Arkansas criminal law lies within the discretion of the trial judge at  
7 the time of sentencing.

8 (e)(1) For the purpose of determining whether a defendant has  
9 previously been convicted or found guilty of two (2) or more felonies, a  
10 conviction or finding of guilt of burglary, § 5-39-201, and of the felony  
11 that was the object of the burglary are considered a single felony conviction  
12 or finding of guilt.

13 (2) A conviction or finding of guilt of an offense that was a  
14 felony under the law in effect prior to January 1, 1976, is considered a  
15 previous felony conviction or finding of guilt.

16 (f) For the purposes of determining whether a defendant has previously  
17 been convicted of a serious felony involving violence or a felony involving  
18 violence under subsections (c) and (d) of this section, the entry of a plea  
19 of guilty or nolo contendere or a finding of guilt by a court to a felony  
20 enumerated in subsections (c) and (d) of this section, respectively, as a  
21 result of which a court places the defendant on a suspended imposition of  
22 sentence, a suspended sentence, or probation, or sentences the defendant to  
23 the Department of Correction, is considered a previous felony conviction.

24 (g) Any defendant deemed eligible to be sentenced under a provision of  
25 both subsections (c) and (d) of this section shall be sentenced only under  
26 subsection (d) of this section.

27 (h) If the provisions of subsection (c) or (d) of this section, or  
28 both, are held invalid by a court, the defendant's case shall be remanded to  
29 the trial court for resentencing of the defendant under the provisions of  
30 subsections (a) and (b) of this section.

31  
32  
33  
34  
35  
36