

State of Arkansas

77th General Assembly

A Bill

SENATE BILL

Third Extraordinary Session, 1989

CALL ITEM 1145

By: Senators Yates, Gibson, Canada and Benham

For An Act To Be Entitled

"AN ACT TO PRESCRIBE THE CRIMINAL OFFENSE OF ORGANIZING OR LEADING A CRIMINAL ACTIVITY OR ENTERPRISE TO COMMIT DRUG CRIMES; TO MAKE THE OFFENSE PUNISHABLE BY DEATH OR BY IMPRISONMENT FOR LIFE WITHOUT PAROLE; AND FOR OTHER PURPOSES."

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

SECTION 1. As used in this act, unless the context otherwise requires:

(1) "Criminal activity or enterprise" means a group of two (2) or more individuals, partnerships, corporations, associations or other legal entity or group of individuals associated in fact but not a legal entity who are organized or associated together and who have committed or planned to commit an unlawful act;

(2) "Organizes" or leads" means a person who exercises decision making authority over the other other participants in the commission of the offenses, who recruited accomplices or the participants which committed or plan to commit the offenses, and who claimed or planned to claim a right to a larger share of the fruits of the crime; and

(3) "Participant" means a person who is criminally responsible for the commission of an criminal offense, but need not have been convicted.

SECTION 2. It shall be unlawful for any person to organize or to lead a criminal activity or enterprise whose purpose was to commit criminal violations under the Arkansas Controlled Substances Act, Chapter 64 of Title 5 of the Arkansas Code. A person commits the offense of organizing or leading a criminal activity or enterprise to commit violations of the Arkansas Controlled Substances Act, Chapter 64 of Title 5 of the Arkansas Code, if he organizes or leads a criminal activity or enterprise in which he and five (5)

or more participants commit or plan to commit a violation of the Arkansas Controlled Substances Act carrying a criminal penalty or potential criminal penalty as a Class Y felony.

SECTION 3. Organizing or leading a criminal activity or enterprise to commit violations of the Arkansas Controlled Substances Act, Chapter 64 of Title 5 of the Arkansas Code, is punishable by death or life imprisonment without parole pursuant to procedures outlined in this act.

SECTION 4. (a) It is the intention of the General Assembly of the State of Arkansas, in enacting this act, to specify the procedures and standards pursuant to which a sentencing body must conform in making a determination as to whether a sentence of death or life imprisonment without parole is to be imposed upon a conviction of the offense of organizing or leading a criminal activity or enterprise to commit violations of the Arkansas Controlled Substances Act.

(b) The following procedures shall govern trials of persons charged with the offense of organizing or leading a criminal activity or enterprise to commit violations of the Arkansas Controlled Substances Act:

(1) The jury shall first hear all evidence relevant to the charge or charges and shall then retire to reach a verdict of guilt or innocence.

(2) If the defendant is found guilty of the offense, the same jury shall sit again in order to hear additional evidence as to any aggravating or mitigating circumstances to determine whether to sentence the defendant to death or to life imprisonment without parole.

(3) In determining sentence, evidence may be presented to the jury as to any matters relating to aggravating or mitigating circumstances. Evidence as to any mitigating circumstances may be presented by either the state or the defendant regardless of its admissibility under the rules governing admission of evidence in trials of criminal matters. The state and the defendant or his counsel shall be permitted to present argument respecting sentencing.

SECTION 5. The jury shall impose a sentence of death if it unanimously returns written findings that:

(1) Aggravating circumstances exist beyond a reasonable doubt; and

(2) Aggravating circumstances outweigh beyond a reasonable doubt all mitigating circumstances found to exist; and

(3) Aggravating circumstances justify a sentence of death beyond a reasonable doubt.

SECTION 6. The jury shall impose a sentence of life imprisonment without parole if it finds that:

(1) Aggravating circumstances do not exist beyond a reasonable doubt; or

(2) Aggravating circumstances do not outweigh beyond a reasonable doubt all mitigating circumstances found to exist; or

(3) Aggravating circumstances do not justify a sentence of death beyond a reasonable doubt.

SECTION 7. Aggravating circumstances shall be limited to the following:

(1) The person previously committed another felony, an element of which was the use or threat of violence to another person or the creation of a substantial risk of death or serious physical injury to another person;

(2) The person previously was convicted of an offense under the Arkansas Controlled Substances Act which was punishable as a Class Y felony;

(3) The criminal activity or enterprise involved transactions or possession of a quantity of controlled substances which was more than ten (10) times the minimum quantities necessary to constitute any Class Y felony under the Arkansas Controlled Substances Act;

(4) The criminal activity or enterprise involved transactions of or possession of an amount money which exceeds one-half million dollars (\$500,000).

SECTION 8. Mitigating circumstances shall include, but are not limited to, the following:

(1) The offense was committed while the defendant was under extreme mental or emotional disturbance;

(2) The youth of the defendant at the time of the commission of the offense;

(3) The defendant has no significant history of prior criminal activity.

SECTION 9. A person sentenced to life imprisonment without parole shall

be remanded to the custody of the Department of Correction for imprisonment for the remainder of his life and shall not be released except pursuant to commutation, pardon, or reprieve of the Governor. A person sentenced to life imprisonment without parole shall not be eligible for parole and shall not be paroled.

SECTION 10. (a) The punishment of death is to be administered by a continuous intravenous injection of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent until the defendant's death is pronounced according to accepted standards of medical practice.

(b) The Director of the Department of Correction shall determine the substances to be uniformly administered and the procedures to be used in any execution.

SECTION 11. All provisions of this act of general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 12. All laws and parts of laws in conflict with this act are hereby repealed.