

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

# A Bill

HOUSE BILL 1277

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

7

8

9

## 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."

19

20

## 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:

29

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

1 four (4) felonies, may be sentenced to an extended term of imprisonment as  
2 follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 unclassified offense;

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

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

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

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

32           (d)(1) A defendant who is convicted of a felony involving violence  
33 enumerated below and who has previously been convicted on two (2) or more  
34 separate and distinct prior occasions of one (1) or more of the felonies  
35 involving violence enumerated below shall be sentenced to an extended term of

1 imprisonment, without eligibility for parole or community punishment  
2 transfer, as follows:

3 (A) For a conviction of a Class Y felony, a term of not  
4 less than life in prison;

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

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

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

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

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

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

30 (3) After reaching the verdict of guilty on a felony involving  
31 violence, the same jury or the same judge sitting without a jury shall sit  
32 again in order to hear additional evidence determined pursuant to the  
33 procedures outlined in § 5-4-502, and if it is then determined beyond a  
34 reasonable doubt that in fact the defendant has previously pleaded guilty,  
35 nolo contendere, or been found guilty of two or more prior felonies involving

1 violence, then the defendant shall be sentenced in accordance with the  
2 provisions of subdivision (d)(1) of this section. The determination of  
3 whether a felony conviction from another jurisdiction is comparable to one of  
4 the enumerated felonies involving violence under Arkansas criminal law shall  
5 lie within the discretion of the trial judge at the time of sentencing.

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

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

24 (g) In the event the provisions of subsections (c) or (d), or both,  
25 are held invalid by a court, the defendants case shall remanded to the trial  
26 court for resentencing of the defendant under the provisions of subsections  
27 (a) and (b) of this section."  
28

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

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35

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

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

*/s/Rep. Ferrell, et al*

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

**HB 1277**

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9

**0116951129.jjd222**