

1 State of Arkansas

2 80th General Assembly

3 Regular Session, 1995

4 By: Representative K. Wood

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## 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."

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### Subtitle

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

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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,  
24 748 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

1 attempt to commit the other; or

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

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

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

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

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

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

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

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

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

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

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

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

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