

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

# A Bill

HOUSE BILL 1655

4 By: Representative Ferrell

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## For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 5-2-405 AND  
9 5-3-103 TO PROVIDE THAT IT IS NO DEFENSE TO PROSECUTION  
10 THAT DEFENDANT AND OTHER PERSON WERE TRIED JOINTLY; AND  
11 FOR OTHER PURPOSES."

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## Subtitle

14 "TO PROVIDE THAT IT IS NO DEFENSE TO  
15 PROSECUTION THAT DEFENDANT AND OTHER  
16 PERSON WERE TRIED JOINTLY"

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

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20 SECTION 1. Arkansas Code Annotated § 5-2-405 is amended to read as  
21 follows:

22 "5-2-405. Claims which are not defenses to liability for another.

23 In any prosecution for an offense in which the liability of the  
24 defendant is based on conduct of another person, it is no defense that:

25 (1) The offense charged, as defined, can be committed only by a  
26 particular class of persons; and the defendant, not belonging to such class,  
27 is for that reason legally incapable of committing the offense in an  
28 individual capacity, unless imposing liability on him is inconsistent with  
29 the purpose of the provision establishing his incapacity; or

30 (2) The other person has not been charged with, prosecuted for,  
31 convicted of, or has been acquitted of any offense or has been convicted of a  
32 different offense or degree of offense, based upon the conduct in question,  
33 even if the defendant and the other person were tried jointly; or

34 (3) The other person has a legal immunity from prosecution based  
35 upon the conduct in question."

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SECTION 2. Arkansas Code Annotated § 5-3-103 is amended to read as follows:

"5-3-103. Solicitation and conspiracy - Defenses and claims which are not defenses.

(a) It is a defense to a prosecution for solicitation or conspiracy to commit an offense that:

(1) The defendant is a victim of the offense; or

(2) The offense is defined so that the defendant's conduct is inevitably incident to its commission.

(b) It is not a defense to a prosecution for conspiracy or solicitation to commit an offense that:

(1) The defendant or the person whom he solicits or with whom he conspires does not occupy a particular position or have a particular characteristic which is an element of that offense, if the defendant believes that one of them does; or

(2) The person whom the defendant solicits or with whom he conspires is irresponsible or is immune to prosecution or conviction for the commission of the offense or has feigned agreement; or

(3) The person whom the defendant solicits or with whom he conspires has not been charged with, prosecuted for, convicted of, or has been acquitted of an offense based upon the conduct alleged or has been convicted of a different offense or degree of offense, even if the defendant and the person whom the defendant solicits or with whom he conspires were tried jointly; or

(4) The person whom the defendant solicits or with whom he conspires could not be guilty of committing that offense because he is unaware of the criminal nature of the conduct in question or of the defendant's criminal purpose; or

(5) The offense charged, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to such class, is for that reason legally incapable of committing the offense in an individual capacity unless imposing liability on him is inconsistent with the purpose of the provision establishing his incapacity."

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SECTION 3. By these amendments the General Assembly of the State of Arkansas legislatively overrules *Yedrysek v. State*, 293, Ark. 541, 739 S. W. 2d 672 (1987).

SECTION 4. 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 5. 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 6. All laws and parts of laws in conflict with this act are hereby repealed.

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