

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H3/19/97

# A Bill

HOUSE BILL 1890

4  
5 *By: Representatives Hale and Ferrell*  
6  
7

## For An Act To Be Entitled

9 "AN ACT TO AMEND ARK. CODE ANN. § 5-4-501 TO MAKE IT CLEAR  
10 THAT THE SENTENCES OF DEFENDANTS CONVICTED OF SERIOUS  
11 VIOLENT FELONIES ENUMERATED IN SUBSECTION (c)(2) MAY BE  
12 ENHANCED WITH PRIOR FELONIES NOT ENUMERATED IN SUBSECTION  
13 (c)(2); TO MAKE IT CLEAR THAT THE SENTENCES OF DEFENDANTS  
14 CONVICTED OF FELONIES INVOLVING VIOLENCE ENUMERATED IN  
15 SUBSECTION (d)(2) MAY BE ENHANCED WITH PRIOR FELONIES NOT  
16 ENUMERATED IN SUBSECTION (d)(2); TO INCLUDE DOMESTIC  
17 BATTERING IN THE FIRST DEGREE AS A FELONY INVOLVING  
18 VIOLENCE IN SUBSECTION (d)(2); AND FOR OTHER PURPOSES."  
19

## Subtitle

20  
21 "AN ACT TO AMEND ARK. CODE ANN. §  
22 5-4-501"  
23

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

25  
26 SECTION 1. Arkansas Code 5-4-501 is amended to read as follows:

27 "§ 5-4-501. Habitual offenders - Sentencing for felony.

28 (a)(1) A defendant who is convicted of a felony other than those  
29 enumerated in subsections (c) and (d) of this section committed after June 30,  
30 1993, and who has previously been convicted of more than one (1) but less than  
31 four (4) felonies, or who has been found guilty of more than one (1) but less  
32 than four (4) felonies, ~~may be sentenced to an extended term of imprisonment~~  
33 ~~as follows: ; or~~

34 (2) A defendant who is convicted of any felony enumerated in  
35 subsection (c) committed after August 31, 1997, and who has previously been  
36 convicted of more than one (1) but less than four (4) felonies not enumerated

1 in subsection (c), or who has been found guilty of more than one (1) but less  
2 than four (4) felonies not enumerated in subsection (c); or

3 (3) A defendant who is convicted of any felony enumerated in subsection  
4 (d) committed after August 31, 1997, and who has previously been convicted of  
5 more than one (1) but less than (4) felonies not enumerated in subsection (d),  
6 or who has been found guilty of more than one (1) but less than four (4)  
7 felonies not enumerated in subsection (d), may be sentenced to an extended  
8 term of imprisonment as follows:

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

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

13 ~~(3)~~ (C) For a conviction of a Class B felony, a term of not less than  
14 five (5) years nor more than thirty (30) years;

15 ~~(4)~~ (D) For a conviction of a Class C felony, a term of not less than  
16 three (3) years nor more than twenty (20) years;

17 ~~(5)~~ (E) For a conviction of a Class D felony, a term of not more than  
18 twelve (12) years;

19 ~~(6)~~ (F) For a conviction of an unclassified felony punishable by less  
20 than life imprisonment, not more than five (5) years more than the maximum  
21 sentence for the unclassified offense;

22 ~~(7)~~ (G) For a conviction of an unclassified felony punishable by life  
23 imprisonment, not less than ten (10) years nor more than fifty (50) years, or  
24 life.

25 (b)(1) A defendant who is convicted of a felony other than those  
26 enumerated in subsections (c) and (d) of this section committed after June 30,  
27 1993, and who has previously been convicted of four (4) or more felonies or  
28 who has been found guilty of four (4) or more felonies, ~~may be sentenced to an~~  
29 ~~extended term of imprisonment as follows:~~ or

30 (2) A defendant who is convicted of any felony enumerated in subsection  
31 (c) committed after June 30, 1997, and who has previously been convicted of  
32 four (4) or more felonies not enumerated in subsection (c), or who has been  
33 found guilty of four (4) or more felonies not enumerated in subsection (c); or

34 (3) A defendant who is convicted of any felony enumerated in subsection  
35 (d) committed after June 30, 1997, and who has previously been convicted of  
36 four (4) or more felonies not enumerated in subsection (d), or who has been

1 found guilty of four (4) or more felonies not enumerated in subsection (d),  
2 may be sentenced to an extended term of imprisonment as follows:

3 ~~\_\_\_\_\_~~(1) (A) For a conviction of a Class Y felony, a term of not less than  
4 ten (10) years nor more than life;

5 ~~\_\_\_\_\_~~(2) (B) For a conviction of a Class A felony, a term of not less than  
6 six (6) years nor more than sixty (60) years;

7 ~~\_\_\_\_\_~~(3) (C) For a conviction of a Class B felony, a term of not less than  
8 five (5) years nor more than forty (40) years;

9 ~~\_\_\_\_\_~~(4) (D) For a conviction of a Class C felony, a term of not less than  
10 three (3) years nor more than thirty (30) years;

11 ~~\_\_\_\_\_~~(5) (E) For a conviction of a Class D felony, a term of not more than  
12 fifteen (15) years;

13 ~~\_\_\_\_\_~~(6) (F) For a conviction of an unclassified felony punishable by less  
14 than life imprisonment, not more than twice the maximum sentence for the  
15 unclassified offense;

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

19 (c)(1) A defendant who is convicted of a serious felony involving  
20 violence enumerated in subdivision (c)(2) of this section and who has  
21 previously been convicted ~~on one (1) or more separate and distinct prior~~  
22 ~~occasions~~ of one (1) or more of the serious felonies involving violence  
23 enumerated in subdivision (c)(2) of this section shall be sentenced to  
24 imprisonment, without eligibility except under ~~§ 16-93-1302~~ of parole or  
25 community punishment transfer, for a term of not less than forty (40) years  
26 nor more than eighty (80) years, or life.

27 (2) For the purposes of this subsection, a serious felony involving  
28 violence shall mean:

29 (A) Any of the following felonies enumerated as follows:

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

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

32 (iii) Kidnapping, involving activities making it a Class Y felony,  
33 § 5-11-102;

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

35 (v) Rape, § 5-14-103;

36 (vi) Terroristic act, involving activities making it a Class Y

1 felony, § 5-13-310;

2 (vii) Causing a catastrophe, § 5-38-202(a); or

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

5 ~~—— (3)(A) After reaching the verdict of guilty on a serious felony  
6 involving violence, the same jury or the same judge sitting without a jury  
7 shall sit again in order to hear additional evidence determined pursuant to  
8 the procedures outlined in § 5-4-502, and if it is then determined beyond a  
9 reasonable doubt that in fact the defendant has previously pleaded guilty or  
10 nolo contendere to, or been found guilty of, a prior serious felony involving  
11 violence, then the defendant shall be sentenced in accordance with the  
12 provisions of subdivision (c)(1) of this section.~~

13 (3)(A) The following procedure shall govern trials at which a sentence  
14 to an extended term of imprisonment is sought pursuant to 5-4-501(c):

15 (1) The jury shall first hear all evidence relevant to the  
16 serious felony involving violence with which defendant is currently charged  
17 and shall retire to reach a verdict of guilt or innocence on this charge.

18 (2) If the defendant is found guilty of the serious felony  
19 involving violence, the trial court, out of the hearing of the jury, shall  
20 hear evidence of whether the defendant has pleaded guilty, nolo contendere, or  
21 been found guilty of, a prior serious felony involving violence and shall  
22 determine the number of such prior felony convictions, if any. Defendant  
23 shall have the right to hear and controvert this evidence and to offer  
24 evidence in his support.

25 (3) The trial court shall then instruct the jury as to the number  
26 of previous convictions for serious felonies involving violence and the  
27 statutory sentencing range. The jury may be advised as to the nature of the  
28 previous convictions and the date and place thereof.

29 (4) The jury shall retire again and then determine a sentence  
30 within the statutory range.

31 (B) The determination of whether a felony conviction from another  
32 jurisdiction is comparable to one of the enumerated serious felonies involving  
33 violence under Arkansas criminal law shall lie within the discretion of the  
34 trial judge at the time of sentencing.

35 (d)(1) A defendant who is convicted of a felony involving violence  
36 enumerated in subdivision (d)(2) of this section and who has previously been

1 convicted ~~on two (2) or more separate and distinct prior occasions of one (1)~~  
2 of two (2) or more of the felonies involving violence enumerated in  
3 subdivision (d)(2) of this section shall be sentenced to an extended term of  
4 imprisonment, without eligibility except under ~~§ 16-93-1302~~ for parole or  
5 community punishment transfer, as follows:

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

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

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

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

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

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

20 (2) For the purposes of this subsection, a felony involving violence  
21 shall mean:

22 (A) Any of the following felonies enumerated as follows:

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

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

25 (iii) Kidnapping, ~~§ 5-11-102;~~

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

27 (v) Rape, ~~§ 5-14-103;~~

28 (vi) Battery in the first degree, ~~§ 5-13-201;~~

29 (vii) Terroristic act, ~~§ 5-13-310;~~

30 (viii) ~~Unlawful discharge of a firearm from a vehicle, § 5-74-107~~

31 Sexual abuse in the first degree, § 5-14-108;

32 (ix) ~~Criminal use of prohibited weapons, involving activities~~  
33 ~~making it a Class B felony, § 5-73-104~~Violation of a minor in the first  
34 degree, § 5-14-120;

35 (x) ~~A felony attempt, solicitation, or conspiracy to commit:~~

36 ~~(a) Capital murder, § 5-10-101;~~

- 1 ~~\_\_\_\_\_ (b) Murder in the first degree, § 5-10-102;~~
- 2 ~~\_\_\_\_\_ (c) Murder in the second degree, § 5-10-103;~~
- 3 ~~\_\_\_\_\_ (d) Kidnapping, § 5-11-102;~~
- 4 ~~\_\_\_\_\_ (e) Aggravated robbery, § 5-12-103;~~
- 5 ~~\_\_\_\_\_ (f) Rape, § 5-14-103; or~~
- 6 ~~\_\_\_\_\_ (g) Battery in the first degree, § 5-13-201~~Domestic battering
- 7 in the first degree, § 5-26-303;

8 (xi) ~~Sexual abuse in the first degree, § 5-14-108~~Unlawful  
 9 dishcharge of a firearm from a vehicle, § 5-74-107;

10 (xii) ~~Violation of a minor in the first degree, § 5-14-120~~Criminal  
 11 use of prohibited weapons, involving activities making it a Class B felony, §  
 12 5-73-104; or

13 (xiii) A felony attempt, solicitation, or conspiracy to commit:

- 14 (a) Capital murder, § 5-10-101;
- 15 (b) Murder in the first degree, § 5-10-102;
- 16 (c) Murder in the second degree, § 5-10-103;
- 17 (d) Kidnapping, § 5-11-102;
- 18 (e) Aggravated robbery, § 5-12-103;
- 19 (f) Rape, § 5-14-103;
- 20 (g) Battery in the first degree, § 5-13-201; or
- 21 (h) Domestic battering in the first degree, § 5-26-303.

22 (B) A conviction of a comparable felony involving violence from  
 23 another jurisdiction.

24 ~~\_\_\_\_\_ (3)(A) After reaching the verdict of guilty on a felony involving~~  
 25 ~~violence, the same jury or the same judge sitting without a jury shall sit~~  
 26 ~~again in order to hear additional evidence determined pursuant to the~~  
 27 ~~procedures outlined in § 5-4-502, and if it is then determined beyond a~~  
 28 ~~reasonable doubt that in fact the defendant has previously pleaded guilty or~~  
 29 ~~nolo contendere to, or been found guilty of, two (2) of more prior felonies~~  
 30 ~~involving violence, then the defendant shall be sentenced in accordance with~~  
 31 ~~the provisions of subdivision (d)(1) of this section.~~

32 (3)(A) The following procedure shall govern trials at which a sentence  
 33 to an extended term of imprisonment is sought pursuant to 5-4-501(d):

34 (1) The jury shall first hear all evidence relevant to the felony  
 35 involving violence with which defendant is currently charged and shall retire  
 36 to reach a verdict of guilt or innocence on this charge.

1                   (2) If the defendant is found guilty of the felony involving  
2 violence, the trial court, out of the hearing of the jury, shall hear evidence  
3 of whether the defendant has pleaded guilty, nolo contendere, or been found  
4 guilty of, two or more prior felonies involving violence and shall determine  
5 the number of such prior felony convictions, if any. Defendant shall have the  
6 right to hear and controvert this evidence and to offer evidence in his  
7 support.

8                   (3) The trial court shall then instruct the jury as to the number  
9 of previous convictions involving violence and the statutory sentencing range.  
10 The jury may be advised as to the nature of the previous convictions and the  
11 date and place thereof.

12                   (4) The jury shall retire again and then determine a sentence  
13 within the statutory range.

14                   (B) The determination of whether a felony conviction from another  
15 jurisdiction is comparable to one of the enumerated felonies involving  
16 violence under Arkansas criminal law shall lie within the discretion of the  
17 trial judge at the time of sentencing.

18                   (e)(1) For the purpose of determining whether a defendant has  
19 previously been convicted or found guilty of two (2) or more felonies, a  
20 conviction or finding of guilt of burglary and of the felony that was the  
21 object of the burglary shall be considered a single felony conviction or  
22 finding of guilt.

23                   (2) A conviction or finding of guilt of an offense that was a felony  
24 under the law in effect prior to January 1, 1976, shall be considered a  
25 previous felony conviction or finding of guilt.

26                   (f) For the purposes of determining whether a defendant has previously  
27 been convicted of a serious felony involving violence or a felony involving  
28 violence under subsections (c) and (d) of this section, the entry of a plea of  
29 guilty or nolo contendere or a finding of guilt by a court to a felony  
30 enumerated in subsections (c) and (d) of this section, respectively, as a  
31 result of which a court places the defendant on a suspended imposition of  
32 sentence, a suspended sentence, or probation, or sentences the defendant to  
33 the Department of Correction, shall be considered a previous felony  
34 conviction.

35                   (g) Any defendant deemed eligible to be sentenced under provisions of  
36 both subsections (c) and (d) of this section shall be sentenced only under

1 subsection (d) of this section.

2 (h) In the event the provisions of subsections (c) or (d) of this  
3 section, or both, are held invalid by a court, the defendant's case shall be  
4 remanded to the trial court for resentencing of the defendant under the  
5 provisions of subsections (a) and (b) of this section."

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7 SECTION 2. Arkansas Code 16-93-611 is amended to read as follows:

8 "§ 16-93-611. Class Y felonies.

9 Notwithstanding any law allowing the award of meritorious good time or  
10 any other law to the contrary, any person who is found guilty of or  
11 who pleads guilty or nolo contendere to murder in the first degree, §  
12 5-10-102, kidnapping, Class Y felonies, § 5-11-102, aggravated robbery, §  
13 5-12-103, rape, § 5-14-103, and causing a catastrophe, § 5-38-202(a), shall  
14 not be eligible for parole or community punishment transfer until the person  
15 serves seventy percent (70%)  
16 of the term of imprisonment, including a sentence prescribed under Arkansas  
17 Code § 5-4-501, to which the person is sentenced."

18

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

22

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

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

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/s/Rep. Hale et al

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