

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/17/99

A Bill

HOUSE BILL 2138

5 By: Representative Napper
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For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 5-1-110 TO AUTHORIZE
10 SEPARATE CONVICTIONS, SENTENCES, AND CUMULATIVE
11 PUNISHMENTS FOR SIMULTANEOUS POSSESSION OF DRUGS AND
12 FIREARMS AND THE UNDERLYING FELONY VIOLATION OF 5-64-
13 401 OR THE UNDERLYING ATTEMPT, SOLICITATION, OR
14 CONSPIRACY TO COMMIT A FELONY VIOLATION OF 5-64-401."
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Subtitle

16 "AN ACT TO AMEND ARKANSAS CODE 5-1-110."
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Intent. It is the intent of the legislature in passing this
23 act, pursuant to Missouri v. Hunter, 459 U.S. 359(1983), to authorize
24 explicitly separate convictions, sentences, and cumulative punishments for
25 simultaneous possession of drugs and firearms under Arkansas Code 5-74-106 and
26 the underlying felony violation of Arkansas Code 5-64-401 or the underlying
27 attempt, solicitation, or conspiracy to commit a felony violation of Arkansas
28 Code 5-64-401.
29

30 SECTION 2. Arkansas Code 5-1-110 is amended to read as follows:

31 "5-1-110. Conduct constituting more than one offense - Prosecution.

32 (a) When the same conduct of a defendant may establish the commission
33 of more than one (1) offense, the defendant may be prosecuted for each such
34 offense. He may not, however, be convicted of more than one (1) offense if:

35 (1) One offense is included in the other, as defined in
36 subsection (b) of this section; or

1 (2) One offense consists only of a conspiracy, solicitation, or
2 attempt to commit the other; or

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

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

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

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

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

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

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

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

26 (d)(1) Notwithstanding any provision of law to the contrary, separate
27 convictions and sentences are authorized for:

28 (A) Capital murder, § 5-10-101, and any felonies utilized
29 as underlying felonies for the murder;

30 (B) Murder in the first degree, § 5-10-102, and any
31 felonies utilized as underlying felonies for the murder; ~~and~~

32 (C) Continuing criminal enterprise, § 5-64-414, and any of
33 the predicate felonies utilized to prove the continuing criminal enterprise; ~~and~~
34 and

35 (D) Simultaneous possession of drugs and firearms, Arkansas
36 Code 5-74-106, and the underlying felony violation of Arkansas Code 5-64-401

1 or the underlying attempt, solicitation, or conspiracy to commit a felony
2 violation of Arkansas Code 5-64-401.

3 (2) With respect to all of the aforementioned offenses, the trial
4 judge shall, pursuant to § 5-4-403, have the discretion to order that the
5 multiple terms of imprisonment run concurrently or consecutively.”

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

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

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

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/s/ Napper