

1 State of Arkansas
2 85th General Assembly
3 First Extraordinary Session, 2006
4

Call Item 23

A Bill

HOUSE BILL 1004

5 By: Representatives D. Creekmore, Abernathy, Adcock, Borhauer, Boyd, Bright, Burris, Childers, Cook,
6 Cooper, Davenport, Dunn, L. Evans, Everett, Fite, George, Glidewell, R. Green, Hardwick, Harrelson, J.
7 Hutchinson, T. Hutchinson, J. Johnson, Kenney, Key, Kidd, Lamoureux, Mack, Maloch, M. Martin,
8 Medley, Nichols, Overbey, Petrus, S. Prater, Pyle, Ragland, Rankin, Roebuck, Rogers, Sample, Saunders,
9 Sullivan, Walters, Wells, Wood, Wyatt
10 By: Senators Broadway, Altes, Faris, Glover, Higginbothom, Holt, T. Smith, J. Taylor, Trusty, Whitaker,
11 Womack

For An Act To Be Entitled

12
13
14 AN ACT RELATING TO THE SENTENCING OF OFFENDERS
15 FOR CERTAIN SEX OFFENSES INVOLVING CHILDREN LESS
16 THAN TWELVE (12) YEARS OF AGE; AND FOR OTHER
17 PURPOSES.
18

Subtitle

19
20 AN ACT RELATING TO THE SENTENCING OF
21 OFFENDERS FOR CERTAIN SEX OFFENSES
22 INVOLVING CHILDREN LESS THAN TWELVE (12)
23 YEARS OF AGE.
24

25
26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code § 5-4-501(c), pertaining to the sentencing of
30 a habitual offender for a serious felony involving violence, is amended to
31 read as follows:

32 (c)(1) A Except as provided in subdivision (c)(3) of this section, a
33 defendant who is convicted of a serious felony involving violence enumerated
34 in subdivision (c)(2) of this section and who has previously been convicted
35 of one (1) or more of the serious felonies involving violence enumerated in
36 subdivision (c)(2) of this section shall be sentenced:



1 (A) To imprisonment for a term of not less than forty (40)
 2 years nor more than eighty (80) years, or life; and

3 (B) Without eligibility for parole or community correction
 4 transfer except under § 16-93-1302.

5 (2) As used in this subsection, “serious felony involving
 6 violence” means:

7 (A) Any of the following felonies:

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

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

10 (iii) Kidnapping, § 5-11-102, involving an activity
 11 making it a Class Y felony;

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

13 (v) Rape, § 5-14-103;

14 (vi) Sexual assault in the first degree, § 5-14-124;

15 ~~(vi)~~ (vii) Terroristic act, § 5-13-310, involving an
 16 activity making it a Class Y felony; or

17 ~~(vii)~~ (viii) Causing a catastrophe, § 5-38-202(a); or

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

20 (3) A defendant who is convicted of rape, § 5-14-103, or sexual
 21 assault in the first degree, § 5-14-124, involving a victim less than twelve
 22 (12) years of age and who has previously been convicted of one (1) or more of
 23 the serious felonies involving violence enumerated in subdivision (c)(2) of
 24 this section shall be sentenced to life in prison without the possibility of
 25 parole.

26 ~~(3)~~(4)(A) The following procedure governs a trial at which a
 27 sentence to an extended term of imprisonment is sought pursuant to this
 28 subsection:

29 (i) The jury shall first hear all evidence relevant
 30 to the serious felony involving violence with which the defendant is
 31 currently charged and shall retire to reach a verdict of guilt or innocence
 32 on this charge;

33 (ii)(a) If the defendant is found guilty of the
 34 serious felony involving violence, out of the hearing of the jury the trial
 35 court shall hear evidence of whether the defendant has pleaded guilty or nolo
 36 contendere to or been found guilty of a prior serious felony involving

1 violence and shall determine the number of prior serious felony involving
2 violence convictions, if any.

3 (b) The defendant has the right to hear and
4 controvert evidence described in subdivision (c)~~(3)~~(4)(A)(ii)(a) of this
5 section and to offer evidence in his or her support;

6 (iii)(a) The trial court shall then instruct the
7 jury as to the number of prior convictions for a serious felony involving
8 violence and the statutory sentencing range.

9 (b) The jury may be advised as to the nature
10 of a prior serious felony involving violence conviction and the date and
11 place of a prior serious felony involving violence conviction; and

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

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

18

19 SECTION 2. Arkansas Code § 5-14-103(c), pertaining to the penalty
20 classification for the offense of rape, is amended to read as follows:

21 (c)(1) Rape is a Class Y felony.

22 (2) Any person who pleads guilty or nolo contendere to or is
23 found guilty of rape involving a victim who is less than twelve (12) years of
24 age shall be sentenced to a minimum term of imprisonment of twenty-five (25)
25 years.

26

27 SECTION 3. Arkansas Code § 5-14-124(d), pertaining to the penalty
28 classification for the offense of sexual assault in the first degree, is
29 amended to read as follows:

30 (d)(1) Sexual assault in the first degree is a Class A felony.

31 (2) Any person who pleads guilty or nolo contendere to or is
32 found guilty of sexual assault in the first degree involving a victim who is
33 less than twelve (12) years of age shall be sentenced to a minimum term of
34 imprisonment of twenty (20) years.

35

36