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## Alabama

### **§ 13A-5-9. Habitual felony offenders -- Additional penalties.**

Ala.Code 1975 § 13A-5-9

(a) In all cases when it is shown that a criminal defendant has been previously convicted of a felony and after the conviction has committed another felony, he or she must be punished as follows:

- (1) On conviction of a Class C felony, he or she must be punished for a Class B felony.
- (2) On conviction of a Class B felony, he or she must be punished for a Class A felony.
- (3) On conviction of a **Class A felony**, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.

(b) In all cases when it is shown that a criminal defendant has been previously convicted of any two felonies and after such convictions has committed another felony, he or she must be punished as follows:

- (1) On conviction of a Class C felony, he or she must be punished for a Class A felony.
- (2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
- (3) On conviction of a Class A felony, he or she must be punished by imprisonment for life or for any term of not less than 99 years.

(c) In all cases when it is shown that a criminal defendant has been previously convicted of any three felonies and after such convictions has committed another felony, he or she must be punished as follows:

- (1) On conviction of a Class C felony, he or she must be punished by imprisonment for life or for any term of not more than 99 years but not less than 15 years.
- (2) On conviction of a Class B felony, he or she must be punished by imprisonment for life or any term of not less than 20 years.

(3) On conviction of a Class A felony, where the defendant has no prior convictions for any Class A felony, he or she must be punished by imprisonment for life or life without the possibility of parole, in the discretion of the trial court.

(4) On conviction of a Class A felony, where the defendant has one or more prior convictions for any Class A felony, he or she must be punished by imprisonment for life without the possibility of parole.

## **Credits**

(Acts 1977, No. 607, p. 812, § 1235; Acts 1979, No. 79-664, p. 1163, § 1; [2000-759, p. 1736, § 1.](#))

## **Arkansas**

### **§ 5-4-501. Habitual offenders -- Sentencing for felony**

Effective: July 27, 2011

A.C.A. § 5-4-501

(a)(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (a)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies or who has been found guilty of more than one (1) but fewer than four (4) felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (c) of this section or who has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (c) of this section; or

(C) A defendant who:

- (i) Is convicted of any felony enumerated in subsection (d) of this section committed after August 31, 1997; and
- (ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (d) of this section or has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (d) of this section.

(2) The extended term of imprisonment for a defendant described in subdivision (a)(1) of this section is as follows:

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

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

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

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

(E) For a conviction of a Class D felony, a term of imprisonment of not more than twelve (12) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than five (5) years more than the maximum sentence for the unclassified felony; and

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

**(b)(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (b)(2) of this section:**

(A) A defendant who:

- (i) Is convicted of a felony other than a felony enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of four (4) or more felonies or who has been found guilty of four (4) or more felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (c) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (c) of this section; or

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (d) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (d) of this section.

(2) The extended term of imprisonment for a defendant described in subdivision (b)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than sixty (60) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than forty (40) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than thirty (30) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than fifteen (15) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than two (2) times the maximum sentence for the unclassified felony offense; and

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

(c)(1) Except as provided in subdivision (c)(3) of this section, a defendant who is convicted of a serious felony involving violence enumerated in subdivision (c)(2) of this section and who previously has been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the serious felony involving violence conviction and shall be sentenced:

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

(B) Without eligibility for parole or community correction transfer except under [§ 16-93-615](#).

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

(A) Any of the following felonies:

(i) Murder in the first degree, [§ 5-10-102](#);

(ii) Murder in the second degree, [§ 5-10-103](#);

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

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

(v) Terroristic act, [§ 5-13-310](#), involving an activity making it a Class Y felony;

(vi) Rape, [§ 5-14-103](#);

(vii) Sexual assault in the first degree, [§ 5-14-124](#);

(viii) Causing a catastrophe, [§ 5-38-202\(a\)](#); or

(ix) Aggravated residential burglary, [§ 5-39-204](#); or

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

(3) A defendant who is convicted of rape, [§ 5-14-103](#), or sexual assault in the first degree, [§ 5-14-124](#), involving a victim less than fourteen (14) years of age and who has previously been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the rape or sexual assault in the first degree conviction and shall be sentenced to life in prison without the possibility of parole.

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

- (i) The jury shall first hear all evidence relevant to the serious felony involving violence with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;
- (ii)(a) If the defendant is found guilty of the serious felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of a prior serious felony involving violence and shall determine the number of prior serious felony involving violence convictions, if any.
  - (b) The defendant has the right to hear and controvert evidence described in subdivision (c)(4)(A)(ii)(a) of this section and to offer evidence in his or her support;
  - (iii)(a) The trial court shall then instruct the jury as to the number of prior convictions for a serious felony involving violence and the statutory sentencing range.
    - (b) The jury may be advised as to the nature of a prior serious felony involving violence conviction and the date and place of a prior serious felony involving violence conviction; and
  - (iv) The jury shall retire again and then determine a sentence within the statutory range.

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

**(d)(1)** A defendant who is convicted of a **felony involving violence** enumerated in subdivision (d)(2) of this section and who previously has been convicted of two (2) or more of the felonies involving violence enumerated in subdivision (d)(2) of this section may be sentenced to pay any fine authorized by law for the felony involving violence conviction and shall be sentenced to an extended term of imprisonment without eligibility for parole or community correction transfer except under [§ 16-93-615](#) as follows:

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

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

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

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

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

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

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

(A) Any of the following felonies:

(i) Murder in the first degree, [§ 5-10-102](#);

(ii) Murder in the second degree, [§ 5-10-103](#);

(iii) Kidnapping, [§ 5-11-102](#);

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

(v) Rape, [§ 5-14-103](#);

(vi) Battery in the first degree, [§ 5-13-201](#);

(vii) Terroristic act, [§ 5-13-310](#);

(viii) Sexual assault in the first degree, [§ 5-14-124](#);

(ix) Sexual assault in the second degree, [§ 5-14-125](#);

(x) Domestic battering in the first degree, [§ 5-26-303](#);

(xi) Aggravated residential burglary, [§ 5-39-204](#);

(xii) Unlawful discharge of a firearm from a vehicle, [§ 5-74-107](#);

(xiii) Criminal use of prohibited weapons, [§ 5-73-104](#), involving an activity making it a Class B felony; or

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

(a) Capital murder, [§ 5-10-101](#);

(b) Murder in the first degree, [§ 5-10-102](#);

(c) Murder in the second degree, [§ 5-10-103](#);

(d) Kidnapping, [§ 5-11-102](#);

(e) Aggravated robbery, [§ 5-12-103](#);

(f) Rape, [§ 5-14-103](#);

(g) Battery in the first degree, [§ 5-13-201](#);

(h) Domestic battering in the first degree, [§ 5-26-303](#); or



- (i) Aggravated residential burglary, [§ 5-39-204](#); or
- (B) A conviction of a comparable felony involving violence from another jurisdiction.

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

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

(ii)(a) If the defendant is found guilty of the felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of two (2) or more prior felonies involving violence and shall determine the number of prior felony involving violence convictions, if any.

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

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

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

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

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

**(e)(1)** For the purpose of determining whether a defendant has previously been convicted or found guilty of two (2) or more felonies, a conviction or finding of guilt of burglary, [§ 5-39-201](#), and of the felony that was the object of the burglary are considered a single felony conviction or finding of guilt.

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

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

(g) Any defendant deemed eligible to be sentenced under a provision of both subsections (c) and (d) of this section shall be sentenced only under subsection (d) of this section.

(h) If the provisions of subsection (c) or (d) of this section, or both, are held invalid by a court, the defendant's case shall be remanded to the trial court for resentencing of the defendant under the provisions of subsections (a) and (b) of this section.

Currentness - A.C.A. § 5-4-501, AR ST § 5-4-501

Current through 2012 Fiscal Sess. and 11/6/2012 election, including changes made by Ark. Code Rev. Comm. received through 11/1/2012, and emerg. eff. acts from 2013 Reg. Sess.: 7, 38, 39, 40, 41, 67, 109, 111, 135, 136, 139, 145, 147, 153, 169, 171, 176, 210, 234, 276, 282, 290, 304, 308, 315, 332, 336, 350, 378, 427, 442, 457, 458, 461, 500, 504, 512, 521, 522, 528, 539, 556, 557, 575, 600 to 602, 713, 747, 969, 990, 999, 1018, 1042, 1065, 1081, 1093, 1095, 1100, 1109, 1169, 1173, 1180, 1184, 1227, 1241, 1271, 1302, 1311, 1315, 1334, 1405, 1413, 1444, 1497, 1498, 1500.

## **Florida**

**775.084. Violent career criminals; habitual felony offenders and habitual violent felony offenders; three-time violent felony offenders; definitions; procedure; enhanced penalties or mandatory minimum prison terms**

Effective: October 1, 2012

West's F.S.A. § 775.084

Currentness

(1) As used in this act:

(a) “Habitual felony offender” means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(a), if it finds that:

1. The defendant has previously been convicted of any combination of two or more felonies in this state or other qualified offenses.

2. The felony for which the defendant is to be sentenced was committed:

a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for a felony or other qualified offense; or

b. Within 5 years of the date of the conviction of the defendant's last prior felony or other qualified offense, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for a felony or other qualified offense, whichever is later.

3. The felony for which the defendant is to be sentenced, and one of the two prior felony convictions, is not a violation of s. 893.13 relating to the purchase or the possession of a controlled substance.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(b) “Habitual violent felony offender” means a defendant for whom the court may impose an extended term of imprisonment, as provided in paragraph (4)(b), if it finds that:

1. The defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

a. Arson;

b. Sexual battery;

- c. Robbery;
  - d. Kidnapping;
  - e. Aggravated child abuse;
  - f. Aggravated abuse of an elderly person or disabled adult;
  - g. Aggravated assault with a deadly weapon;
  - h. Murder;
  - i. Manslaughter;
  - j. Aggravated manslaughter of an elderly person or disabled adult;
  - k. Aggravated manslaughter of a child;
  - l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
  - m. Armed burglary;
  - n. Aggravated battery; or
  - o. Aggravated stalking.
2. The felony for which the defendant is to be sentenced was committed:
- a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
  - b. Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.
3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.
4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.
- (c) "Three-time violent felony offender" means a defendant for whom the court must impose a mandatory minimum term of imprisonment, as provided in paragraph (4)(c), if it finds that:

1. The defendant has previously been convicted as an adult two or more times of a felony, or an attempt to commit a felony, and two or more of such convictions were for committing, or attempting to commit, any of the following offenses or combination thereof:

- a. Arson;
- b. Sexual battery;
- c. Robbery;
- d. Kidnapping;
- e. Aggravated child abuse;
- f. Aggravated abuse of an elderly person or disabled adult;
- g. Aggravated assault with a deadly weapon;
- h. Murder;
- i. Manslaughter;
- j. Aggravated manslaughter of an elderly person or disabled adult;
- k. Aggravated manslaughter of a child;
- l. Unlawful throwing, placing, or discharging of a destructive device or bomb;
- m. Armed burglary;
- n. Aggravated battery;
- o. Aggravated stalking;
- p. Home invasion/robbery;
- q. Carjacking; or
- r. An offense which is in violation of a law of any other jurisdiction if the elements of the offense are substantially similar to the elements of any felony offense enumerated in sub-subparagraphs a.-q., or an attempt to commit any such felony offense.

2. The felony for which the defendant is to be sentenced is one of the felonies enumerated in sub-subparagraphs 1.a.-q. and was committed:

a. While the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r.; or

b. Within 5 years after the date of the conviction of the last prior offense enumerated in sub-subparagraphs 1.a.-r., or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for any offense enumerated in sub-subparagraphs 1.a.-r., whichever is later.

3. The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this paragraph.

4. A conviction of a crime necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(d) “**Violent career criminal**” means a defendant for whom the court must impose imprisonment pursuant to paragraph (4)(d), if it finds that:

1. The defendant has previously been convicted as an adult three or more times for an offense in this state or other qualified offense that is:

a. Any forcible felony, as described in s. 776.08;

b. Aggravated stalking, as described in s. 784.048(3) and (4);

c. Aggravated child abuse, as described in s. 827.03(2)(a);

d. Aggravated abuse of an elderly person or disabled adult, as described in s. 825.102(2);

e. Lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in s. 800.04 or s. 847.0135(5);

f. Escape, as described in s. 944.40; or

g. A felony violation of chapter 790 involving the use or possession of a firearm.

2. The defendant has been incarcerated in a state prison or a federal prison.

3. The primary felony offense for which the defendant is to be sentenced is a felony enumerated in subparagraph 1. and was committed on or after October 1, 1995, and:

- a. While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
- b. Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.

4. The defendant has not received a pardon for any felony or other qualified offense that is necessary for the operation of this paragraph.

5. A conviction of a felony or other qualified offense necessary to the operation of this paragraph has not been set aside in any postconviction proceeding.

(e) "Qualified offense" means any offense, substantially similar in elements and penalties to an offense in this state, which is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction, that was punishable under the law of such jurisdiction at the time of its commission by the defendant by death or imprisonment exceeding 1 year.

(2) For the purposes of this section, the placing of a person on probation or community control without an adjudication of guilt shall be treated as a prior conviction.

(3)(a) In a separate proceeding, the court shall determine if the defendant is a habitual felony offender or a habitual violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a habitual felony offender or a habitual violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.

5. For the purpose of identification of a habitual felony offender or a habitual violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

6. For an offense committed on or after October 1, 1995, if the state attorney pursues a habitual felony offender sanction or a habitual violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a habitual felony offender or a habitual violent felony offender, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a habitual felony offender or a habitual violent felony offender, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which the court determines not to sentence a defendant as a habitual felony offender or a habitual violent felony offender as provided in this subparagraph.

(b) In a separate proceeding, the court shall determine if the defendant is a three-time violent felony offender. The procedure shall be as follows:

1. The court shall obtain and consider a presentence investigation prior to the imposition of a sentence as a three-time violent felony offender.

2. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

3. Except as provided in subparagraph 1., all evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

4. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable to the extent normally applicable to similar findings.



5. For the purpose of identification of a three-time violent felony offender, the court shall fingerprint the defendant pursuant to s. 921.241.

6. For an offense committed on or after the effective date of this act, if the state attorney pursues a three-time violent felony offender sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a three-time violent felony offender, subject to imprisonment pursuant to this section as provided in paragraph (4)(c).

(c) In a separate proceeding, the court shall determine whether the defendant is a violent career criminal with respect to a primary offense committed on or after October 1, 1995. The procedure shall be as follows:

1. Written notice shall be served on the defendant and the defendant's attorney a sufficient time prior to the entry of a plea or prior to the imposition of sentence in order to allow the preparation of a submission on behalf of the defendant.

2. All evidence presented shall be presented in open court with full rights of confrontation, cross-examination, and representation by counsel.

3. Each of the findings required as the basis for such sentence shall be found to exist by a preponderance of the evidence and shall be appealable only as provided in paragraph (d).

4. For the purpose of identification, the court shall fingerprint the defendant pursuant to s. 921.241.

5. For an offense committed on or after October 1, 1995, if the state attorney pursues a violent career criminal sanction against the defendant and the court, in a separate proceeding pursuant to this paragraph, determines that the defendant meets the criteria under subsection (1) for imposing such sanction, the court must sentence the defendant as a violent career criminal, subject to imprisonment pursuant to this section unless the court finds that such sentence is not necessary for the protection of the public. If the court finds that it is not necessary for the protection of the public to sentence the defendant as a violent career criminal, the court shall provide written reasons; a written transcript of orally stated reasons is permissible, if filed by the court within 7 days after the date of sentencing. Each month, the court shall submit to the Office of Economic and Demographic Research of the Legislature the written reasons or transcripts in each case in which

the court determines not to sentence a defendant as a violent career criminal as provided in this subparagraph.

(d) 1. A person sentenced under paragraph (4)(d) as a violent career criminal has the right of direct appeal, and either the state or the defendant may petition the trial court to vacate an illegal sentence at any time. However, the determination of the trial court to impose or not to impose a violent career criminal sentence is presumed appropriate and no petition or motion for collateral or other postconviction relief may be considered based on an allegation either by the state or the defendant that such sentence is inappropriate, inadequate, or excessive.

2. It is the intent of the Legislature that, with respect to both direct appeal and collateral review of violent career criminal sentences, all claims of error or illegality be raised at the first opportunity and that no claim should be filed more than 2 years after the judgment and sentence became final, unless it is established that the basis for the claim could not have been ascertained at the time by the exercise of due diligence. Technical violations and mistakes at trials and sentencing proceedings involving violent career criminals that do not affect due process or fundamental fairness are not appealable by either the state or the defendant.

3. It is the intent of the Legislature that no funds, resources, or employees of the state or its political subdivisions be used, directly or indirectly, in appellate or collateral proceedings based on violent career criminal sentencing, except when such use is constitutionally or statutorily mandated.

(4)(a) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life.
2. In the case of a felony of the second degree, for a term of years not exceeding 30.
3. In the case of a felony of the third degree, for a term of years not exceeding 10.

(b) The court, in conformity with the procedure established in paragraph (3)(a), may sentence the habitual violent felony offender as follows:

1. In the case of a life felony or a felony of the first degree, for life, and such offender shall not be eligible for release for 15 years.
2. In the case of a felony of the second degree, for a term of years not exceeding 30, and such offender shall not be eligible for release for 10 years.

3. In the case of a felony of the third degree, for a term of years not exceeding 10, and such offender shall not be eligible for release for 5 years.

(c) 1. The court, in conformity with the procedure established in paragraph (3)(b), must sentence the three-time violent felony offender to a mandatory minimum term of imprisonment, as follows:

a. In the case of a felony punishable by life, to a term of imprisonment for life;

b. In the case of a felony of the first degree, to a term of imprisonment of 30 years;

c. In the case of a felony of the second degree, to a term of imprisonment of 15 years; or

d. In the case of a felony of the third degree, to a term of imprisonment of 5 years.

2. Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law.

(d) The court, in conformity with the procedure established in paragraph (3)(c), shall sentence the violent career criminal as follows:

1. In the case of a life felony or a felony of the first degree, for life.

2. In the case of a felony of the second degree, for a term of years not exceeding 40, with a mandatory minimum term of 30 years' imprisonment.

3. In the case of a felony of the third degree, for a term of years not exceeding 15, with a mandatory minimum term of 10 years' imprisonment.

(e) If the court finds, pursuant to paragraph (3)(a) or paragraph (3)(c), that it is not necessary for the protection of the public to sentence a defendant who meets the criteria for sentencing as a habitual felony offender, a habitual violent felony offender, or a violent career criminal, with respect to an offense committed on or after October 1, 1995, sentence shall be imposed without regard to this section.

(f) At any time when it appears to the court that the defendant is eligible for sentencing under this section, the court shall make that determination as provided in paragraph (3)(a), paragraph (3)(b), or paragraph (3)(c).

(g) A sentence imposed under this section shall not be increased after such imposition.

(h) A sentence imposed under this section is not subject to s. 921.002.

(i) The provisions of this section do not apply to capital felonies, and a sentence authorized under this section does not preclude the imposition of the death penalty for a capital felony.

(j) The provisions of s. 947.1405 shall apply to persons sentenced as habitual felony offenders and persons sentenced as habitual violent felony offenders.

(k) 1. A defendant sentenced under this section as a habitual felony offender, a habitual violent felony offender, or a violent career criminal is eligible for gain-time granted by the Department of Corrections as provided in s. 944.275(4)(b).

2. For an offense committed on or after October 1, 1995, a defendant sentenced under this section as a violent career criminal is not eligible for any form of discretionary early release, other than pardon or executive clemency, or conditional medical release granted pursuant to s. 947.149.

3. For an offense committed on or after July 1, 1999, a defendant sentenced under this section as a three-time violent felony offender shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release.

(5) In order to be counted as a prior felony for purposes of sentencing under this section, the felony must have resulted in a conviction sentenced separately prior to the current offense and sentenced separately from any other felony conviction that is to be counted as a prior felony.

(6) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section, and to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

Currentness - West's F. S. A. § 775.084, FL ST § 775.084. Current with chapters in effect from the 2013 1st Reg. Sess. of the 23rd Legislature through June 28, 2013

## Georgia

### **§ 17-10-7. Repeat offenders**

Effective: July 1, 2012

Ga. Code Ann., § 17-10-7

(a) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any person who, after having been convicted of a felony offense in this state or

having been convicted under the laws of any other state or of the United States of a crime which if committed within this state would be a felony and sentenced to confinement in a penal institution, commits a felony punishable by confinement in a penal institution, shall be sentenced to undergo the longest period of time prescribed for the punishment of the subsequent offense of which he or she stands convicted, provided that, unless otherwise provided by law, the trial judge may, in his or her discretion, probate or suspend the maximum sentence prescribed for the offense.

(b)(1) As used in this subsection, the term “serious violent felony” means a serious violent felony as defined in subsection (a) of [Section 17-10-6.1](#).

(2) Any person who has been convicted of a serious violent felony in this state or who has been convicted under the laws of any other state or of the United States of a crime which if committed in this state would be a serious violent felony and who after such first conviction subsequently commits and is convicted of a serious violent felony for which such person is not sentenced to death shall be sentenced to imprisonment for life without parole. Any such sentence of life without parole shall not be suspended, stayed, probated, deferred, or withheld, and any such person sentenced pursuant to this paragraph shall not be eligible for any form of pardon, parole, or early release administered by the State Board of Pardons and Paroles or for any earned time, early release, work release, leave, or any other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the sentence of life imprisonment without possibility of parole, except as may be authorized by any existing or future provisions of the Constitution.

(b.1) Subsections (a) and (c) of this Code section shall not apply to a second or any subsequent conviction for any violation of subsection (a), paragraph (1) of subsection (i), or subsection (j) of [Section 16-13-30](#).

(c) Except as otherwise provided in subsection (b) or (b.1) of this Code section, any person who, after having been convicted under the laws of this state for three felonies or having been convicted under the laws of any other state or of the United States of three crimes which if committed within this state would be felonies, commits a felony within this state shall, upon conviction for such fourth offense or for subsequent offenses, serve the maximum time provided in the sentence of the judge based upon such conviction and shall not be eligible for parole until the maximum sentence has been served.

(d) For the purpose of this Code section, conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction.

(e) This Code section is supplemental to other provisions relating to recidivous offenders.

### **§ 17-10-6.1. Sentencing of persons convicted of serious violent felonies**

Effective: May 13, 2011

Ga. Code Ann., § 17-10-6.1

(a) As used in this Code section, the term “**serious violent felony**” means:

- (1) Murder or felony murder, as defined in [Section 16-5-1](#);
- (2) Armed robbery, as defined in [Section 16-8-41](#);
- (3) Kidnapping, as defined in [Section 16-5-40](#);
- (4) Rape, as defined in [Section 16-6-1](#);
- (5) Aggravated child molestation, as defined in subsection (c) of [Section 16-6-4](#), unless subject to the provisions of paragraph (2) of subsection (d) of [Section 16-6-4](#);
- (6) Aggravated sodomy, as defined in [Section 16-6-2](#); or
- (7) Aggravated sexual battery, as defined in [Section 16-6-22.2](#).

(b)(1) Notwithstanding any other provisions of law to the contrary, any person convicted of the serious violent felony of kidnapping involving a victim who is 14 years of age or older or armed robbery shall be sentenced to a mandatory minimum term of imprisonment of ten years and no portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court and shall not be reduced by any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles.

(2) Notwithstanding any other provisions of law to the contrary, the sentence of any person convicted of the serious violent felony of:

- (A) Kidnapping involving a victim who is less than 14 years of age;
- (B) Rape;
- (C) Aggravated child molestation, as defined in subsection (c) of [Section 16-6-4](#), unless subject to the provisions of paragraph (2) of subsection (d) of [Section 16-6-4](#);
- (D) Aggravated sodomy, as defined in [Section 16-6-2](#); or

(E) Aggravated sexual battery, as defined in [Section 16-6-22.2](#) shall, unless sentenced to life imprisonment, **be a split sentence which shall include a mandatory minimum term of imprisonment of 25 years, followed by probation for life.** No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated, deferred, or withheld by the sentencing court or reduced by any form of pardon, parole, or commutation of sentence by the State Board of Pardons and Paroles.

(3) No person convicted of a serious violent felony shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42, relating to probation for first offenders, or any other provision of Georgia law relating to the sentencing of first offenders. The State of Georgia shall have the right to appeal any sentence which is imposed by the superior court which does not conform to the provisions of this subsection in the same manner as is provided for other appeals by the state in accordance with Chapter 7 of Title 5, relating to appeals or certiorari by the state.

(c)(1) Except as otherwise provided in subsection (c) of [Section 42-9-39](#), for a first conviction of a serious violent felony in which the accused has been sentenced to life imprisonment, that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles until that person has served a minimum of 30 years in prison. The minimum term of imprisonment shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections.

(2) For a first conviction of a serious violent felony in which the accused has been sentenced to death but the sentence of death has been commuted to life imprisonment, that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles until that person has served a minimum of 30 years in prison. The minimum term of imprisonment shall not be reduced by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections.

(3) For a first conviction of a serious violent felony in which the accused has been sentenced to imprisonment for life without parole, that person shall not be eligible for any form of parole or early release administered by the State Board of Pardons and Paroles or for any earned time, early release, work release, leave, or other

sentence-reducing measures under programs administered by the Department of Corrections.

(4) Except as otherwise provided in this subsection, any sentence imposed for the first conviction of any serious violent felony shall be served in its entirety as imposed by the sentencing court and shall not be reduced by any form of parole or early release administered by the State Board of Pardons and Paroles or by any earned time, early release, work release, leave, or other sentence-reducing measures under programs administered by the Department of Corrections, the effect of which would be to reduce the period of incarceration ordered by the sentencing court; provided, however, during the final year of incarceration an offender so sentenced shall be eligible to be considered for participation in a department administered transitional center or work release program.

(d) For purposes of this Code section, a first conviction of any serious violent felony means that the person has never been convicted of a serious violent felony under the laws of this state or of an offense under the laws of any other state or of the United States, which offense if committed in this state would be a serious violent felony. Conviction of two or more crimes charged on separate counts of one indictment or accusation, or in two or more indictments or accusations consolidated for trial, shall be deemed to be only one conviction.

Ga. Code Ann., § 17-10-6.1, GA ST § 17-10-6.1  
Current through June 15, 2013

## **Kentucky**

### **§ 532.080 Persistent felony offender sentencing**

Effective: July 12, 2012  
KRS § 532.080  
Currentness

(1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (5) or (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (5) or



(6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilty of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

- (a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and
- (b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and
- (c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or
3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or
4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or
5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A **persistent felony offender in the first degree** is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies, or one (1) or more felony sex crimes against a minor as defined in KRS 17.500, and now stands convicted of any one (1) or more felonies. As used in this provision, a previous felony conviction is a

conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefor; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, postincarceration supervision, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, postincarceration supervision, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one (1) conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the **next highest degree than the offense for which convicted**. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person, in which case probation, shock probation, or conditional discharge may be granted. A violent offender who is found to be a persistent felony offender in the second degree shall not be eligible for parole except as provided in KRS 439.3401.

(6) A person who is found to be a persistent felony offender in the **first degree shall be sentenced to imprisonment as follows:**

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, or if the person was previously convicted of one (1) or more sex crimes committed against a minor as defined in KRS 17.500 and presently stands convicted of a subsequent sex crime, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than fifty (50) years, or life imprisonment, or life imprisonment without parole for twenty-five (25) years for a sex crime committed against a minor;

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, unless all offenses for which the person stands convicted are Class D felony offenses which do not involve a violent act against a person or a sex crime as that term is defined in KRS 17.500, in which case, probation, shock probation, or conditional discharge may be granted. If the offense the person presently stands convicted of is a Class A, B, or C felony, the person shall not be eligible for parole until the person has served a minimum term of incarceration of not less than ten (10) years, unless another sentencing scheme applies. A violent offender who is found to be a persistent felony offender in the first degree shall not be eligible for parole except as provided in KRS 439.3401.

(8) A conviction, plea of guilty, or Alford plea under KRS 218A.1415 shall not trigger the application of this section, regardless of the number or type of prior felony convictions that may have been entered against the defendant. A conviction, plea of guilty, or Alford plea under KRS 218A.1415 may be used as a prior felony offense allowing this section to be applied if he or she is subsequently convicted of a different felony offense.

(9) The provisions of this section amended by 1994 Ky. Acts ch. 396, sec. 11, shall be retroactive.

(10) (a) Except as provided in paragraph (b) of this subsection, this section shall not apply to a person convicted of a criminal offense if the penalty for that offense

was increased from a misdemeanor to a felony, or from a lower felony classification to a higher felony classification, because the conviction constituted a second or subsequent violation of that offense.

(b) This subsection shall not prohibit the application of this section to a person convicted of:

1. A felony offense arising out of KRS 189A.010, 189A.090, 506.140, 508.032, 508.140, or 510.015; or
2. Any other felony offense if the penalty was not enhanced to a higher level because the Commonwealth elected to prosecute the person as a first-time violator of that offense.

Currentness: KRS § 532.080, KY ST § 532.080 - Current through the end of 2012 Regular Session and the 2012 First Extraordinary Session.

KY Regular Sentencing - Effective: June 8, 2011

### **532.060 Sentence of imprisonment for felony; postincarceration supervision**

KRS § 532.060

(1) A sentence of imprisonment for a felony shall be an indeterminate sentence, the maximum of which shall be fixed within the limits provided by subsection (2), and subject to modification by the trial judge pursuant to [532.070](#).

(2) Unless otherwise provided by law, the authorized maximum terms of imprisonment for felonies are:

(a) For a Class A felony, not less than twenty (20) years nor more than fifty (50) years, or life imprisonment;

(b) For a Class B felony, not less than ten (10) years nor more than twenty (20) years;

(c) For a Class C felony, not less than five (5) years nor more than ten (10) years; and

(d) For a Class D felony, not less than one (1) year nor more than five (5) years.

(3) For any felony specified in KRS Chapter 510, [530.020](#), [.064\(1\)\(a\)](#), or [.310](#), the sentence shall include an additional five (5) year period of postincarceration supervision which shall be added to the maximum sentence rendered for the offense. During this period of postincarceration supervision, if a defendant violates

the provisions of postincarceration supervision, the defendant may be reincarcerated for:

- (a) The remaining period of his initial sentence, if any is remaining; and
- (b) The entire period of postincarceration supervision, or if the initial sentence has been served, for the remaining period of postincarceration supervision.

(4) In addition to the penalties provided in this section, for any person subject to a period of postincarceration supervision pursuant to [532.400](#) his or her sentence shall include an additional one (1) year period of postincarceration supervision following release from incarceration upon expiration of sentence if the offender is not otherwise subject to another form of postincarceration supervision. During this period of postincarceration supervision, if an offender violates the provisions of supervision, the offender may be reincarcerated for the remaining period of his or her postincarceration supervision.

(5) The actual time of release within the maximum established by subsection (1), or as modified pursuant to [532.070](#), shall be determined under procedures established elsewhere by law.

## **Louisiana**

### **§ 529.1. Sentences for second and subsequent offenses; certificate of warden or clerk of court in the state of Louisiana as evidence**

Effective: August 15, 2010  
LSA-R.S. 15:529.1

A. Any person who, after having been convicted within this state of a felony, or who, after having been convicted under the laws of any other state or of the United States, or any foreign government of a crime which, if committed in this state would be a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:

(1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.

(2)(a) If the second felony and the prior felony are sex offenses as defined in [.S. 15:541](#), or the prior felony would be a sex offense as defined in [.S. 15:541](#), except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, the person shall be sentenced to imprisonment at hard labor for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than three times the longest possible sentence prescribed for a first conviction, without benefit of probation, parole, or suspension of sentence.

(b) If the second felony and the prior felony are sex offenses as defined in [.S. 15:541](#), or the prior felony would be a sex offense as defined in [.S. 15:541](#), except it occurred prior to June 18, 1992, or the conviction was obtained under the laws of any other state, the United States, or any foreign government, and the victims of the previous offense and the instant offense were under the age of thirteen years at the time of the commission of the offense or any part thereof, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(3) If the third felony is such that upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life then:

(a) The person shall be sentenced to imprisonment for a determinate term not less than two-thirds of the longest possible sentence for the conviction and not more than twice the longest possible sentence prescribed for a first conviction; or

(b) If the third felony and the two prior felonies are felonies defined as a crime of violence under [.S. 14:2\(B\)](#), a sex offense as defined in [.S. 15:540 et seq.](#) when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or any other crimes punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

(4) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:

(a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first

conviction but in no event less than twenty years and not more than his natural life;  
or

(b) If the fourth felony and two of the prior felonies are felonies defined as a crime of violence under [.S. 14:2\(B\)](#), a sex offense as defined in [.S. 15:540 et seq.](#) when the victim is under the age of eighteen at the time of commission of the offense, or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more, or of any other crime punishable by imprisonment for twelve years or more, or any combination of such crimes, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

B. It is hereby declared to be the intent of this Section that an offender need not have been adjudged to be a second offender in a previous prosecution in order to be charged as and adjudged to be a third offender, or that an offender has been adjudged in a prior prosecution to be a third offender in order to be convicted as a fourth offender in a prosecution for a subsequent crime. Multiple convictions obtained on the same day prior to October 19, 2004, shall be counted as one conviction for the purpose of this Section.

C. The current offense shall not be counted as, respectively, a second, third, fourth, or higher offense if more than ten years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence or sentences of the previous conviction or convictions, or between the expiration of the maximum sentence or sentences of each preceding conviction or convictions alleged in the multiple offender bill and the date of the commission of the following offense or offenses. In computing the intervals of time as provided herein, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state, shall not be included in the computation of any of said ten-year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.

D. (1)(a) If, at any time, either after conviction or sentence, it shall appear that a person convicted of a felony has previously been convicted of a felony under the laws of this state, or has been convicted under the laws of any other state, or of the United States, or of any foreign government or country, of a crime, which, if committed in this state would be a felony, the district attorney of the parish in which subsequent conviction was had may file an information accusing the person of a previous conviction. Whereupon the court in which the subsequent conviction was had shall cause the person, whether confined in prison or otherwise, to be

brought before it and shall inform him of the allegation contained in the information and of his right to be tried as to the truth thereof according to law and shall require the offender to say whether the allegations are true. If he denies the allegation of the information or refuses to answer or remains silent, his plea or the fact of his silence shall be entered on the record and he shall be given fifteen days to file particular objections to the information, as provided in Subparagraph (b) of this Paragraph. The judge shall fix a day to inquire whether the offender has been convicted of a prior felony or felonies as set forth in the information.

(b) Except as otherwise provided in this Subsection, the district attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. The presumption of regularity of judgment shall be sufficient to meet the original burden of proof. If the person claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. A person claiming that a conviction alleged in the information was obtained in violation of the constitutions of Louisiana or of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof, by a preponderance of the evidence, on any issue of fact raised by the response. Any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(2) Following a contradictory hearing, the court shall find that the defendant is:

- (a) A second offender upon proof of a prior felony conviction.
- (b) A third offender, upon proof of two prior felony convictions.
- (c) A fourth offender, upon proof of three or more prior felony convictions.

(3) When the judge finds that he has been convicted of a prior felony or felonies, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted, the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed, deducting from the new sentence the time actually served under the sentence so vacated. The court shall provide written reasons for its determination. Either party may seek review of an adverse ruling.

E. Whenever it shall become known to any superintendent or prison, probation, parole, police, or other peace officer, that any person charged with or convicted of a felony has been previously convicted, he shall immediately report the fact to the district attorney of the parish in which the charge lies, or the conviction has been had.



F. The certificates of the warden or other chief officer of any state prison, or of the superintendent or other chief officer of any penitentiary of this state or any other state of the United States, or of any foreign country, or of any chief officer of any parish or county jail in this state or any other state of the United States, or of the clerk of court of the place of conviction in the state of Louisiana, under the seal of his office, if he has a seal, containing the name of the person imprisoned, the photograph, and the fingerprints of the person as they appear in the records of his office, a statement of the court in which a conviction was had, the date and time of sentence, length of time imprisoned, and date of discharge from prison or penitentiary, shall be prima facie evidence of the imprisonment and of the discharge of the person, either by a pardon or expiration of his sentence as the case may be under the conviction stated and set forth in the certificate.

G. Any sentence imposed under the provisions of this Section shall be at hard labor without benefit of probation or suspension of sentence.

H. A person shall not be qualified to be a candidate for elected public office or take elected office if that person has been convicted of a felony, whether convicted within this state or convicted under the laws of any other state or of the United States of a crime which, if committed in this state would be a felony, and has not received a pardon therefor.

Currentness - LSA-R.S. 15:529.1, LA R.S. 15:529.1 - Current through the 2012 Regular Session.

## **Mississippi**

### **§ 99-19-81. Habitual criminals: maximum term**

Miss. Code Ann. § 99-19-81

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, shall be sentenced to the maximum term of imprisonment prescribed for such felony, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

## § 99-19-83. Habitual criminals: life imprisonments

Miss. Code Ann. § 99-19-83

Every person convicted in this state of a felony who shall have been convicted twice previously of any felony or federal crime upon charges separately brought and arising out of separate incidents at different times and who shall have been sentenced to and served separate terms of one (1) year or more in any state and/or federal penal institution, whether in this state or elsewhere, and where any one (1) of such felonies shall have been a crime of violence shall be sentenced to life imprisonment, and such sentence shall not be reduced or suspended nor shall such person be eligible for parole or probation.

## Missouri

### **558.019. Prior felony convictions, minimum prison terms--prison commitment defined--dangerous felony, minimum term prison term, how calculated--sentencing commission created, members, duties, expenses--cooperation with commission--restorative justice methods--restitution fund**

Effective: August 28, 2012  
V.A.M.S. 558.019

1. This section shall not be construed to affect the powers of the governor under [IV, section 7, of the Missouri Constitution](#). This statute shall not affect those provisions of [565.020](#), [558.018](#) or [571.015](#), which set minimum terms of sentences, or the provisions of [559.115](#), relating to probation.

2. The provisions of subsections 2 to 5 of this section shall be applicable to all classes of felonies except those set forth in chapter 195, and those otherwise excluded in subsection 1 of this section. For the purposes of this section, “**prison commitment**” means and is the receipt by the department of corrections of an offender after sentencing. For purposes of this section, prior prison commitments to the department of corrections shall not include commitment to a regimented discipline program established pursuant to [217.378](#). Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found guilty of a felony other than a **dangerous felony** as defined in [556.061](#) and

is committed to the department of corrections shall be required to serve the following minimum prison terms:

(1) If the offender has **one** previous prison commitment to the department of corrections for a felony offense, the minimum prison term which the offender must serve shall be **forty percent** of his or her sentence or until the offender attains seventy years of age, and has served at least thirty percent of the sentence imposed, whichever occurs first;

(2) If the offender has **two** previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the offender must serve shall be **fifty percent** of his or her sentence or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first;

(3) If the offender has three or more previous prison commitments to the department of corrections for felonies unrelated to the present offense, the minimum prison term which the offender must serve shall be eighty percent of his or her sentence or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

3. Other provisions of the law to the contrary notwithstanding, any offender who has pleaded guilty to or has been found guilty of a dangerous felony as defined in [556.061](#) and is committed to the department of corrections shall be required to serve a minimum prison term of eighty-five percent of the sentence imposed by the court or until the offender attains seventy years of age, and has served at least forty percent of the sentence imposed, whichever occurs first.

4. For the purpose of determining the minimum prison term to be served, the following calculations shall apply:

(1) A sentence of life shall be calculated to be thirty years;

(2) Any sentence either alone or in the aggregate with other consecutive sentences for crimes committed at or near the same time which is over seventy-five years shall be calculated to be seventy-five years.

5. For purposes of this section, the term “**minimum prison term**” shall mean time required to be served by the offender before he or she is eligible for parole, conditional release or other early release by the department of corrections.

6. (1) A **sentencing advisory commission** is hereby created to consist of eleven members. One member shall be appointed by the speaker of the house. One member shall be appointed by the president pro tem of the senate. One member shall be the director of the department of corrections. Six members shall be appointed by and serve at the pleasure of the governor from among the following: the public defender commission; private citizens; a private member of the Missouri Bar; the board of probation and parole; and a prosecutor. Two members shall be appointed by the supreme court, one from a metropolitan area and one from a rural area. All members shall be appointed to a four-year term. All members of the sentencing commission appointed prior to August 28, 1994, shall continue to serve on the sentencing advisory commission at the pleasure of the governor.

(2) The commission shall study sentencing practices in the circuit courts throughout the state for the purpose of determining whether and to what extent disparities exist among the various circuit courts with respect to the length of sentences imposed and the use of probation for offenders convicted of the same or similar crimes and with similar criminal histories. The commission shall also study and examine whether and to what extent sentencing disparity among economic and social classes exists in relation to the sentence of death and if so, the reasons therefor sentences are comparable to other states, if the length of the sentence is appropriate, and the rate of rehabilitation based on sentence. It shall compile statistics, examine cases, draw conclusions, and perform other duties relevant to the research and investigation of disparities in death penalty sentencing among economic and social classes.

(3) The commission shall study alternative sentences, prison work programs, work release, home-based incarceration, probation and parole options, and any other programs and report the feasibility of these options in Missouri.

(4) The governor shall select a chairperson who shall call meetings of the commission as required or permitted pursuant to the purpose of the sentencing commission.

(5) The members of the commission shall not receive compensation for their duties on the commission, but shall be reimbursed for actual and necessary expenses incurred in the performance of these duties and for which they are not reimbursed by reason of their other paid positions.

(6) The circuit and associate circuit courts of this state, the office of the state courts administrator, the department of public safety, and the department of corrections shall cooperate with the commission by providing information or access to

information needed by the commission. The office of the state courts administrator will provide needed staffing resources.

7. Courts shall retain discretion to lower or exceed the sentence recommended by the commission as otherwise allowable by law, and to order restorative justice methods, when applicable.

8. If the imposition or execution of a sentence is suspended, the court may order any or all of the following restorative justice methods, or any other method that the court finds just or appropriate:

- (1) Restitution to any victim or a statutorily created fund for costs incurred as a result of the offender's actions;
- (2) Offender treatment programs;
- (3) Mandatory community service;
- (4) Work release programs in local facilities; and
- (5) Community-based residential and nonresidential programs.

9. The provisions of this section shall apply only to offenses occurring on or after August 28, 2003.

10. Pursuant to subdivision (1) of subsection 8 of this section, the court may order the assessment and payment of a designated amount of restitution to a county law enforcement restitution fund established by the county commission pursuant to [50.565](#). Such contribution shall not exceed three hundred dollars for any charged offense. Any restitution moneys deposited into the county law enforcement restitution fund pursuant to this section shall only be expended pursuant to the provisions of [50.565](#).

11. A judge may order payment to a restitution fund only if such fund had been created by ordinance or resolution of a county of the state of Missouri prior to sentencing. A judge shall not have any direct supervisory authority or administrative control over any fund to which the judge is ordering a defendant to make payment.

12. A defendant who fails to make a payment to a county law enforcement restitution fund may not have his or her probation revoked solely for failing to make such payment unless the judge, after evidentiary hearing, makes a finding supported by a preponderance of the evidence that the defendant either willfully refused to make the payment or that the defendant willfully, intentionally, and

purposefully failed to make sufficient bona fide efforts to acquire the resources to pay.

13. Nothing in this section shall be construed to allow the sentencing advisory commission to issue recommended sentences in specific cases pending in the courts of this state.

Currentness - V. A. M. S. 558.019, MO ST 558.019

Statutes are current with emergency legislation approved through July 1, 2013, of the 2013 First Regular Session of the 97th General Assembly. Constitution is current through the November 6, 2012 General Election.

### **556.061. Code definitions**

Effective: August 28, 2008  
V.A.M.S. 556.061

(8) “**Dangerous felony**” means the felonies of arson in the first degree, assault in the first degree, attempted forcible rape if physical injury results, attempted forcible sodomy if physical injury results, forcible rape, forcible sodomy, kidnapping, murder in the second degree, assault of a law enforcement officer in the first degree, domestic assault in the first degree, elder abuse in the first degree, robbery in the first degree, statutory rape in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, statutory sodomy in the first degree when the victim is a child less than twelve years of age at the time of the commission of the act giving rise to the offense, and, abuse of a child pursuant to subdivision (2) of subsection 3 of section 568.060, child kidnapping, and parental kidnapping committed by detaining or concealing the whereabouts of the child for not less than one hundred twenty days under section 565.153;

Mo. Rev. Stat. Ann. § 556.061 (West)

## **North Carolina**

### **§ 15A-1340.14. Prior record level for felony sentencing**

Effective: December 1, 2009

N.C.G.S.A. § 15A-1340.14

Currentness

(a) Generally. -- The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender's prior convictions that the court, or with respect to subdivision (b)(7) of this section, the jury, finds to have been proved in accordance with this section.

(b) Points. -- Points are assigned as follows:

(1) For each prior felony Class A conviction, 10 points.

(1a) For each prior felony Class B1 conviction, 9 points.

(2) For each prior felony Class B2, C, or D conviction, 6 points.

(3) For each prior felony Class E, F, or G conviction, 4 points.

(4) For each prior felony Class H or I conviction, 2 points.

(5) For each prior misdemeanor conviction as defined in this subsection, 1 point. For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense, impaired driving (G.S. 20-138.1), impaired driving in a commercial vehicle (G.S. 20-138.2), and misdemeanor death by vehicle (G.S. 20-141.4(a2)), but not any other misdemeanor traffic offense under Chapter 20 of the General Statutes.

(6) If all the elements of the present offense are included in any prior offense for which the offender was convicted, whether or not the prior offense or offenses were used in determining prior record level, 1 point.

(7) If the offense was committed while the offender was on supervised or unsupervised probation, parole, or post-release supervision, or while the offender was serving a sentence of imprisonment, or while the offender was on escape from a correctional institution while serving a sentence of imprisonment, 1 point.

For purposes of determining prior record points under this subsection, a conviction for a first degree rape or a first degree sexual offense committed prior to the effective date of this subsection shall be treated as a felony Class B1 conviction, and a conviction for any other felony Class B offense committed prior to the effective date of this subsection shall be treated as a felony Class B2 conviction. G.S. 15A-1340.16(a5) specifies the procedure to be used to determine if a point exists under subdivision (7) of this subsection. The State must provide a defendant

with written notice of its intent to prove the existence of the prior record point under subdivision (7) of this subsection as required by G.S. 15A-1340.16(a6).

(c) Prior Record Levels for Felony Sentencing. -- The prior record levels for felony sentencing are:

- (1) Level I -- Not more than 1 point.
- (2) Level II -- At least 2, but not more than 5 points.
- (3) Level III -- At least 6, but not more than 9 points.
- (4) Level IV -- At least 10, but not more than 13 points.
- (5) Level V -- At least 14, but not more than 17 points.
- (6) Level VI -- At least 18 points.

In determining the prior record level, the classification of a prior offense is the classification assigned to that offense at the time the offense for which the offender is being sentenced is committed.

(d) Multiple Prior Convictions Obtained in One Court Week. -- For purposes of determining the prior record level, if an offender is convicted of more than one offense in a single superior court during one calendar week, only the conviction for the offense with the highest point total is used. If an offender is convicted of more than one offense in a single session of district court, only one of the convictions is used.

(e) Classification of Prior Convictions From Other Jurisdictions. -- Except as otherwise provided in this subsection, a conviction occurring in a jurisdiction other than North Carolina is classified as a Class I felony if the jurisdiction in which the offense occurred classifies the offense as a felony, or is classified as a Class 3 misdemeanor if the jurisdiction in which the offense occurred classifies the offense as a misdemeanor. If the offender proves by the preponderance of the evidence that an offense classified as a felony in the other jurisdiction is substantially similar to an offense that is a misdemeanor in North Carolina, the conviction is treated as that class of misdemeanor for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as either a misdemeanor or a felony in the other jurisdiction is substantially similar to an offense in North Carolina that is classified as a Class I felony or higher, the conviction is treated as that class of felony for assigning prior record level points. If the State proves by the preponderance of the evidence that an offense classified as a misdemeanor in the other jurisdiction is substantially similar to an offense



classified as a Class A1 or Class 1 misdemeanor in North Carolina, the conviction is treated as a Class A1 or Class 1 misdemeanor for assigning prior record level points.

(f) Proof of Prior Convictions. -- A prior conviction shall be proved by any of the following methods:

(1) Stipulation of the parties.

(2) An original or copy of the court record of the prior conviction.

(3) A copy of records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts.

(4) Any other method found by the court to be reliable.

The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction. The original or a copy of the court records or a copy of the records maintained by the Division of Criminal Information, the Division of Motor Vehicles, or of the Administrative Office of the Courts, bearing the same name as that by which the offender is charged, is prima facie evidence that the offender named is the same person as the offender before the court, and that the facts set out in the record are true. For purposes of this subsection, "a copy" includes a paper writing containing a reproduction of a record maintained electronically on a computer or other data processing equipment, and a document produced by a facsimile machine. The prosecutor shall make all feasible efforts to obtain and present to the court the offender's full record. Evidence presented by either party at trial may be utilized to prove prior convictions. Suppression of prior convictions is pursuant to G.S. 15A-980. If a motion is made pursuant to that section during the sentencing stage of the criminal action, the court may grant a continuance of the sentencing hearing. If asked by the defendant in compliance with G.S. 15A-903, the prosecutor shall furnish the defendant's prior criminal record to the defendant within a reasonable time sufficient to allow the defendant to determine if the record available to the prosecutor is accurate. Upon request of a sentencing services program established pursuant to Article 61 of Chapter 7A of the General Statutes, the district attorney shall provide any information the district attorney has about the criminal record of a person for whom the program has been requested to provide a sentencing plan pursuant to G.S. 7A-773.1.

Currentness: N.C.G.S.A. § 15A-1340.14, NC ST § 15A-1340.14 - The statutes and Constitution are current through S.L. 2013-107 of the 2013 Regular Session of the General Assembly.

**§ 15A-1340.16A. Enhanced sentence if defendant is convicted of a Class A, B1, B2, C, D, or E felony and the defendant used, displayed, or threatened to use or display a firearm or deadly weapon during the commission of the felony**

(a), (b) Repealed by Session Laws 2003-378, s. 2, effective August 1, 2003.

(c) If a person is convicted of a Class A, B1, B2, C, D, or E felony and it is found as provided in this section that: (i) the person committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and (ii) the person actually possessed the firearm or deadly weapon about his or her person, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 60 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 60 months, as specified in [.S. 15A-1340.17\(e\)](#) and [\(e1\)](#).

(d) An indictment or information for the Class A, B1, B2, C, D, or E felony shall allege in that indictment or information the facts set out in subsection (c) of this section. The pleading is sufficient if it alleges that the defendant committed the felony by using, displaying, or threatening the use or display of a firearm or deadly weapon and the defendant actually possessed the firearm or deadly weapon about the defendant's person. One pleading is sufficient for all Class A, B1, B2, C, D, or E felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (c) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (c) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (c) of this section does not apply if the evidence of the use, display, or threatened use or display of the firearm or deadly weapon is needed to prove an element of the felony or if the person is not sentenced to an active term of imprisonment.

**Credits**

Added by [1994 \(1st Ex. Sess.\), c. 22, § 20, eff. Oct. 1, .](#) Amended by [.L. 2003-378, § 2, eff. Aug. 1, ; .L. 2008-214, § 5, eff. Dec. 1, .](#)

**§ 15A-1340.16B. Life imprisonment without parole for a second or subsequent conviction of a Class B1 felony if the victim was 13 years of age or younger and there are no mitigating factors**

N.C.G.S.A. § 15A-1340.16B

(a) If a person is convicted of a Class B1 felony and it is found as provided in this section that:

- (i) the person committed the felony against a victim who was 13 years of age or younger at the time of the offense and
- (ii) the person has one or more prior convictions of a Class B1 felony, then the person shall be sentenced to life imprisonment without parole.

(b) Repealed by [.L. 2003-378, § 3, eff. Aug. 1, 2003.](#)

(c) Repealed by [.L. 2003-378, § 3, eff. Aug. 1, 2003.](#)

(d) An indictment or information for the Class B1 felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony against a victim who was 13 years of age or younger at the time of the felony and that the defendant had one or more prior convictions of a Class B1 felony. One pleading is sufficient for all Class B1 felonies that are tried at a single trial.

(e) The State shall prove the issues set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to the issues. The issues shall be presented in the same manner as provided in [.S. 15A-928\(c\)](#). If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issues set out in subsection (a) of this section, then a jury shall be impaneled to determine the issues.

(f) Subsection (a) of this section does not apply if there are mitigating factors present under [.S. 15A-1340.16\(e\)](#).

Currentness: N.C.G.S.A. § 15A-1340.16B, NC ST § 15A-1340.16B - The statutes and Constitution are current through S.L. 2013-107 of the 2013 Regular Session of the General Assembly.

**§ 15A-1340.16C. Enhanced sentence if defendant is convicted of a felony and the defendant was wearing or had in his or her immediate possession a bullet-proof vest during the commission of the felony**

N.C.G.S.A. § 15A-1340.16C

Currentness

(a) If a person is convicted of a felony and it is found as provided in this section that the person wore or had in his or her immediate possession a bullet-proof vest at the time of the felony, then the person is guilty of a felony that is one class higher than the underlying felony for which the person was convicted.

(b) Repealed by S.L. 2003-378, § 4, eff. Aug. 1, 2003.

(b1) This section does not apply to law enforcement officers, unless the State proves beyond a reasonable doubt, pursuant to subsection (d) of this section, both of the following:

(1) That the law enforcement officer was not performing or attempting to perform a law enforcement function.

(2) That the law enforcement officer knowingly wore or had in his or her immediate possession a bulletproof vest at the time of the commission of the felony for the purpose of aiding the law enforcement officer in the commission of the felony.

(c) An indictment or information for the felony shall allege in that indictment or information or in a separate indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the felony while wearing or having in the defendant's immediate possession a bulletproof vest. One pleading is sufficient for all felonies that are tried at a single trial.

(d) The State shall prove the issue set out in subsection (a) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the felony unless the defendant pleads guilty or no contest to that issue. If the defendant pleads guilty or no contest to the felony but pleads not guilty to the issue set out in

subsection (a) of this section, then a jury shall be impaneled to determine that issue.

(e) Subsection (a) of this section does not apply if the evidence that the person wore or had in the person's immediate possession a bulletproof vest is needed to prove an element of the felony.

#### Credits

Added by Laws S.L. 1999-263, § 1, eff. Dec. 1, 1999. Amended by S.L. 2003-378, § 4, eff. Aug. 1, 2003.

N.C.G.S.A. § 15A-1340.16C, NC ST § 15A-1340.16C

The statutes and Constitution are current through S.L. 2013-128, 130-144 of the 2013 Regular Session of the General Assembly

#### **§ 15A-1340.16D. Enhanced sentence if defendant is convicted of manufacture of methamphetamine and the offense resulted in serious injury to a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter**

N.C.G.S.A. § 15A-1340.16D

#### Currentness

<Text of section eff. until Dec. 1, 2013. See, also, section eff. Dec. 1, 2013.>

(a) If a person is convicted of the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) and it is found as provided in this section that a law enforcement officer, probation officer, parole officer, emergency medical services employee, or a firefighter suffered serious injury while discharging or attempting to discharge his or her official duties and that the injury was directly caused by one of the hazards associated with the manufacture of methamphetamine, then the person shall have the minimum term of imprisonment to which the person is sentenced for that felony increased by 24 months. The maximum term of imprisonment shall be the maximum term that corresponds to the minimum term after it is increased by 24 months, as specified in G.S. 15A-1340.17(e) and (e1).

(b) An indictment or information for the offense of manufacture of methamphetamine under G.S. 90-95(b)(1a) shall allege in that indictment or information the facts set out in subsection (a) of this section. The pleading is sufficient if it alleges that the defendant committed the offense of manufacture of

methamphetamine and that as a result of the offense a law enforcement officer, probation officer, parole officer, emergency medical services employee, or firefighter suffered serious injury while discharging or attempting to discharge his or her official duties. One pleading is sufficient for all felonies that are tried at a single trial.

(c) The State shall prove the issue set out in subsection (b) of this section beyond a reasonable doubt during the same trial in which the defendant is tried for the offense of manufacture of methamphetamine unless the defendant pleads guilty or no contest to the issue. If the defendant pleads guilty or no contest to the offense of manufacture of methamphetamine but pleads not guilty to the issue set out in subsection (b) of this section, then a jury shall be impaneled to determine the issue.

(d) This section does not apply if the offense is packaging or repackaging methamphetamine, or labeling or relabeling the methamphetamine container.

Credits

Added by S.L. 2004-178, § 8, eff. Dec. 1, 2004.

N.C.G.S.A. § 15A-1340.16D, NC ST § 15A-1340.16D

The statutes and Constitution are current through S.L. 2013-128, 130-144 of the 2013 Regular Session of the General Assembly.

## **Oklahoma**

### **§ 51.1. Second and subsequent offenses after conviction of offense punishable by imprisonment in the state penitentiary**

21 Okl.St. Ann. § 51.1

Currentness

A. Except as otherwise provided in the Elderly and Incapacitated Victim's Protection Program<sup>1</sup> and Section 3 of this act, every person who, having been convicted of any offense punishable by imprisonment in the State Penitentiary, commits any crime after such conviction, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the District Attorney seeks to enhance punishment pursuant to this section of law, is punishable therefor as follows:

1. If the offense for which the person is subsequently convicted is an offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes and the offense is punishable by imprisonment in the State Penitentiary for a term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term in the range of ten (10) years to life imprisonment.

2. If the offense of which such person is subsequently convicted is such that upon a first conviction an offender would be punishable by imprisonment in the State Penitentiary for any term exceeding five (5) years, such person is punishable by imprisonment in the State Penitentiary for a term in the range of twice the minimum term for a first time offender to life imprisonment. If the subsequent felony offense does not carry a minimum sentence as a first time offender, such person is punishable by imprisonment in the State Penitentiary for a term in the range of two (2) years to life imprisonment.

3. If such subsequent offense is such that upon a first conviction the offender would be punishable by imprisonment in the State Penitentiary for five (5) years, or any less term, then the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding ten (10) years.

4. If such subsequent conviction is for petit larceny, the person convicted of such subsequent offense is punishable by imprisonment in the State Penitentiary for a term not exceeding five (5) years.

B. Every person who, having been twice convicted of felony offenses, commits a subsequent felony offense which is an offense enumerated in Section 571 of Title 57 of the Oklahoma Statutes, within ten (10) years of the date following the completion of the execution of the sentence, and against whom the District Attorney seeks to enhance punishment pursuant to this section of law, is punishable by imprisonment in the State Penitentiary for a term in the range of twenty (20) years to life imprisonment. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

C. Every person who, having been twice convicted of felony offenses, commits a subsequent felony offense within ten (10) years of the date following the completion of the execution of the sentence, and against whom the District Attorney seeks to enhance punishment pursuant to this section of law, is punishable by imprisonment in the State Penitentiary for a term in the range of three times the minimum term for a first time offender to life imprisonment. If the

subsequent felony offense does not carry a minimum sentence as a first time offender, the person is punishable by imprisonment in the State Penitentiary for a term in the range of four (4) years to life imprisonment. Felony offenses relied upon shall not have arisen out of the same transaction or occurrence or series of events closely related in time and location. Nothing in this section shall abrogate or affect the punishment by death in all crimes now or hereafter made punishable by death.

#### Credits

1999, 1st Ex.Sess., c. 5, § 434, eff. July 1, 1999; Laws 2001, c. 437, § 3, eff. July 1, 2001; Laws 2002, c. 455, § 1, emerg. eff. June 5, 2002.

## South Carolina

### **§ 17-25-45. Life sentence for person convicted for certain crimes.**

Effective: June 11, 2010

Code 1976 § 17-25-45

(A) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a **most serious offense** as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either:

(1) one or more prior convictions for:

(a) a most serious offense; or

(b) a federal or out-of-state conviction for an offense that would be classified as a most serious offense under this section; or

(2) two or more prior convictions for:

(a) a serious offense; or

(b) a federal or out-of-state conviction for an offense that would be classified as a serious offense under this section.

(B) Notwithstanding any other provision of law, except in cases in which the death penalty is imposed, upon a conviction for a **serious offense** as defined by this



section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for:

- (1) a serious offense;
- (2) a most serious offense;
- (3) a federal or out-of-state offense that would be classified as a serious offense or most serious offense under this section; or
- (4) any combination of the offenses listed in items (1), (2), and (3) above.

(C) As used in this section:

(1) "Most serious offense" means:

16-1-40	Accessory, for any offense enumerated in this item
16-1-80	Attempt, for any offense enumerated in this item
16-3-10	Murder
16-3-29	Attempted Murder
16-3-50	Voluntary manslaughter
16-3-85(A)(1)	Homicide by child abuse
16-3-85(A)(2)	Aiding and abetting homicide by child abuse
16-3-210	Lynching, First degree
16-3-210(B)	Assault and battery by mob, First degree
16-3-620	Assault and battery with intent to kill
16-3-652	Criminal sexual conduct, First degree
16-3-653	Criminal sexual conduct, Second degree
16-3-655	Criminal sexual conduct with minors, except where evidence presented at the criminal proceeding and the court, after the conviction, makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct where the victim was younger than the actor, as contained in Section 16-3-655(3)
16-3-656	Assault with intent to commit criminal sexual conduct, First and Second degree
16-3-910	Kidnapping
16-3-920	Conspiracy to commit kidnapping
16-3-930	Trafficking in persons

16-3-1075	Carjacking
16-11-110(A)	Arson, First degree
16-11-311	Burglary, First degree
16-11-330(A)	Armed robbery
16-11-330(B)	Attempted armed robbery
16-11-540	Damaging or destroying building, vehicle, or other property by means of explosive incendiary, death results
24-13-450	Taking of a hostage by an inmate
25-7-30	Giving information respecting national or state defense to foreign contacts during war
25-7-40	Gathering information for an enemy
43-35-85(F)	Abuse or neglect of a vulnerable adult resulting in death
55-1-30(3)	Unlawful removing or damaging of airport facility or equipment when death results
56-5-1030(B)(3)	Interference with traffic-control devices or railroad signs or signals prohibited when death results from violation
58-17-4090	Obstruction of railroad, death results.

(2) “**Serious offense**” means:

(a) any offense which is punishable by a maximum term of imprisonment for thirty years or more which is not referenced in subsection (C)(1);

(b) those felonies enumerated as follows:

16-3-220	Lynching, Second degree
16-3-210(C)	Assault and battery by mob, Second degree
16-3-600(B)	Assault and battery of a high and aggravated nature
16-3-810	Engaging child for sexual performance
16-9-220	Acceptance of bribes by officers
16-9-290	Accepting bribes for purpose of procuring public office
16-11-110(B)	Arson, Second degree
16-11-312(B)	Burglary, Second degree
16-11-380(B)	Theft of a person using an automated teller machine

16-13-210(1)	Embezzlement of public funds
16-13-230(B)(3)	Breach of trust with fraudulent intent
16-13-240(1)	Obtaining signature or property by false pretenses
38-55-540(3)	Insurance fraud
44-53-370(e)	Trafficking in controlled substances
44-53-375(C)	Trafficking in ice, crank, or crack cocaine
44-53-445(B)(1)&(2)	Distribute, sell, manufacture, or possess with intent to distribute controlled substances within proximity of school
56-5-2945	Causing death by operating vehicle while under influence of drugs or alcohol; and

(c) the offenses enumerated below:

16-1-40	Accessory before the fact for any of the offenses listed in subitems (a) and (b)
16-1-80	Attempt to commit any of the offenses listed in subitems (a) and (b)
43-35-85(E)	Abuse or neglect of a vulnerable adult resulting in great bodily injury.

(3) “Conviction” means any conviction, guilty plea, or plea of nolo contendere.

(D) Except as provided in this subsection or subsection (E), no person sentenced pursuant to this section shall be eligible for early release or discharge in any form, whether by parole, work release, release to ameliorate prison overcrowding, or any other early release program, nor shall they be eligible for earned work credits, education credits, good conduct credits, or any similar program for early release. A person is eligible for work release if the person is sentenced for voluntary manslaughter ( [16-3-50](#)), kidnapping ( [16-3-910](#)), carjacking ( [16-3-1075](#)), burglary in the second degree ( [16-11-312\(B\)](#)), armed robbery ( [16-11-330\(A\)](#)), or attempted armed robbery ( [16-11-330\(B\)](#)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in [16-1-60](#), and the person is within three years of release from imprisonment.

(E) For the purpose of this section only, a person sentenced pursuant to this section may be paroled if:

(1) the Department of Corrections requests the Department of Probation, Parole and Pardon Services to consider the person for parole; and

(2) the Department of Probation, Parole and Pardon Services determines that due to the person's health or age he is no longer a threat to society; and

(a) the person has served at least thirty years of the sentence imposed pursuant to this section and has reached at least sixty-five years of age; or

(b) the person has served at least twenty years of the sentence imposed pursuant to this section and has reached at least seventy years of age; or

(c) the person is afflicted with a terminal illness where life expectancy is one year or less; or

(d) the person can produce evidence comprising the most extraordinary circumstances.

(F) For the purpose of determining a prior or previous conviction under this section and [17-25-50](#), a prior or previous conviction shall mean the defendant has been convicted of a most serious or serious offense, as may be applicable, on a separate occasion, prior to the instant adjudication. There is no requirement that the sentence for the prior or previous conviction must have been served or completed before a sentence of life without parole can be imposed under this section.

(G) The decision to invoke sentencing under this section is in the discretion of the solicitor.

(H) Where the solicitor is required to seek or determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial.

## **Credits**

HISTORY: 1982 Act No. 358, §§ 1, 2; 1986 Act No. 462, § 37; [Act No. 83, § 18](#); [Act No. 113, § 4](#); [Act No. 136, § 4](#); [Act No. 402, § 3](#); [Act No. 176, §§ 1, 2, eff March 5, 2002](#); [Act No. 342, § 9, eff July 1, 2006](#); [Act No. 72, § 3, eff June 13, 2007](#); [Act No. 273, § 20, eff June 2, 2010](#); [Act No. 289, § 7, eff June 11, 2010](#).

## **§ 17-25-60. Change of sentence where former convictions were not considered at time of imposition.**

Code 1976 § 17-25-60

If during the service of any such sentence, it is made to appear to the court that the defendant had been convicted of one or more crimes which were not taken into

account at the time of the imposition of the original sentence, the court is authorized to issue a rule directed to the defendant requiring him to show cause before the court, not less than ten days from the granting of the rule, why the former sentence should not be revoked and the defendant be sentenced as required if all of the convictions had been brought to the attention of the court at the time of the imposition of the original sentence.

## Tennessee

### § 40-35-106. Multiple offenders

Effective: July 1, 2010

T. C. A. § 40-35-106

(a) A **multiple offender** is a defendant who has received:

(1) A minimum of two (2) but not more than four (4) prior felony convictions within the conviction class, a higher class, or within the next two (2) lower felony classes, where applicable; or

(2) One (1) Class A prior felony conviction if the defendant's conviction offense is a Class A or B felony.

(b) In determining the number of prior convictions a defendant has received:

(1) "Prior conviction" means a conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced;

(2) All prior felony convictions, including those occurring prior to November 1, 1989, are included;

(3)(A) A finding or adjudication that a defendant committed an act as a juvenile that would constitute a felony if committed by an adult and that resulted in a transfer of the juvenile to criminal court pursuant to § 37-1-134, or similar statutes of other states or jurisdictions, shall not be considered as a prior conviction for the purposes of this section unless the juvenile was convicted of a felony in a criminal court;

(B) Notwithstanding subdivision (b)(3)(A), a finding or adjudication that a defendant committed an act as a juvenile that would constitute a Class A or Class B felony if committed by an adult shall be considered as a prior conviction for the purposes of this section, regardless of whether the juvenile was transferred to

criminal court pursuant to § 37-1-134, or similar statutes of other states or jurisdictions;

(4) Except for convictions for which the statutory elements include serious bodily injury, bodily injury, threatened serious bodily injury or threatened bodily injury to the victim or victims, or convictions for the offense of aggravated burglary under § 39-14-403, convictions for multiple felonies committed within the same twenty-four-hour period constitute one (1) conviction for the purpose of determining prior convictions; and

(5) Prior convictions include convictions under the laws of any other state, government or country that, if committed in this state, would have constituted an offense cognizable by the laws of this state. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used by the Tennessee court to determine what classification the offense is given.

(c) A defendant who is found by the court beyond a reasonable doubt to be a multiple offender shall receive a sentence within Range II.

(d) The finding that a defendant is or is not a multiple offender is appealable by either party.

Effective: August 11, 2010

### **T.C.A. § 40-35-107. Persistent offenders**

(a) A **persistent offender** is a defendant who has received:

(1) Any combination of five (5) or more prior felony convictions within the conviction class or higher or within the next two (2) lower felony classes, where applicable; or

(2) At least two (2) Class A or any combination of three (3) Class A or Class B felony convictions if the defendant's conviction offense is a Class A or B felony.

(b) In determining the number of prior convictions a defendant has received:

(1) Prior conviction means a conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced;

(2) All prior felony convictions, including those occurring prior to November 1, 1989, are included;

(3)(A) A finding or adjudication that a defendant committed an act as a juvenile that would constitute a felony if committed by an adult and that resulted in a transfer of the juvenile to criminal court pursuant to § 37-1-134 or similar statutes of other states or jurisdictions shall not be considered as a prior conviction for the purposes of this section unless the juvenile was convicted of a felony in a criminal court;

(B) Notwithstanding subdivision (b)(3)(A), a finding or adjudication that a defendant committed an act as a juvenile that would constitute a Class A or Class B felony if committed by an adult shall be considered as a prior conviction for the purposes of this section, regardless of whether the juvenile was transferred to criminal court pursuant to § 37-1-134, or similar statutes of other states or jurisdictions;

(4) Except for convictions for which the statutory elements include serious bodily injury, bodily injury, threatened serious bodily injury or threatened bodily injury to the victim or victims or convictions for the offense of aggravated burglary under § 39-14-403, convictions for multiple felonies committed within the same twenty-four-hour period constitute one (1) conviction for the purpose of determining prior convictions; and

(5) Prior convictions includes convictions under the laws of any other state, government or country that, if committed in this state, would have constituted an offense cognizable by the laws of this state. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements of the offense shall be used by the Tennessee court to determine what classification the offense is given.

(c) A defendant who is found by the court beyond a reasonable doubt to be a persistent offender shall receive a sentence within Range III.

(d) The finding that a defendant is or is not a persistent offender is appealable by either party.

#### Credits

1989 Pub.Acts, c. 591, § 6; 2005 Pub.Acts, c. 353, § 3, eff. June 7, 2005; 2009 Pub.Acts, c. 603, § 2; 2010 Pub.Acts, c. 861, § 2, eff. July 1, 2010.

### **T. C. A. § 40-35-108**

#### **§ 40-35-108. Career offenders**

(a) A **career offender** is a defendant who has received:

(1) Any combination of six (6) or more Class A, B or C prior felony convictions, and the defendant's conviction offense is a Class A, B or C felony;

(2) At least three (3) Class A or any combination of four (4) Class A or Class B felony convictions if the defendant's conviction offense is a Class A or B felony; or

(3) At least six (6) prior felony convictions of any classification if the defendant's conviction offense is a Class D or E felony.

(b) In determining the number of prior convictions a defendant has received:

(1) "Prior conviction" means a conviction for an offense occurring prior to the commission of the offense for which the defendant is being sentenced;

(2) All prior felony convictions, including those occurring prior to November 1, 1989, are included;

(3)(A) A finding or adjudication that a defendant committed an act as a juvenile that would constitute a felony if committed by an adult and that resulted in a transfer of the juvenile to criminal court pursuant to § 37-1-134 or similar statutes of other states or jurisdictions shall not be considered as a prior conviction for the purposes of this section, unless the juvenile was convicted of a felony in a criminal court;

(B) Notwithstanding subdivision (b)(3)(A), a finding or adjudication that a defendant committed an act as a juvenile that would constitute a Class A or Class B felony if committed by an adult shall be considered as a prior conviction for the purposes of this section, regardless of whether the juvenile was transferred to criminal court pursuant to § 37-1-134, or similar statutes of other states or jurisdictions;

(4) Except for convictions for which the statutory elements include serious bodily injury, bodily injury, threatened serious bodily injury or threatened bodily injury to the victim or victims or convictions for the offense of aggravated burglary under § 39-14-403, convictions for multiple felonies committed within the same twenty-four-hour period constitute one (1) conviction for the purpose of determining prior convictions; and

(5) "Prior convictions" includes convictions under the laws of any other state, government or country that, if committed in this state, would have constituted an offense cognizable by the laws of this state. In the event that a felony from a jurisdiction other than Tennessee is not a named felony in this state, the elements



of the offense shall be used by the Tennessee court to determine what classification the offense is given.

(c) A defendant who is found by the court beyond a reasonable doubt to be a career offender shall receive the maximum sentence within the applicable Range III.

(d) The finding that a defendant is or is not a career offender is appealable by either party.

### Credits

1989 Pub.Acts, c. 591, § 6; 2005 Pub.Acts, c. 353, § 4, eff. June 7, 2005; 2009 Pub.Acts, c. 603, § 3; 2010 Pub.Acts, c. 861, § 3, eff. July 1, 2010.

## T.C.A. §40-35-101 Short Title

### Tennessee Criminal Sentencing Reform Act of 1989

The potential punishment for each offender can be found by cross-referencing the felony classification with a number of prior felony convictions, if any. This yields a “block” on the sentencing grid to disclose the potential minimum and maximum sentence for that particular offender.

FELONY CLASS	SENTENCE RANGES				
	MITIGATED	STANDARD RANGE I	MULTIPLE RANGE II	PERSISTENT RANGE III	CAREER
<b>A</b>					
15-60 YRS	<i>(13.5 years)</i>	<i>(15-25 years)</i>	<i>(25-40 years)</i>	<i>(40-60 years)</i>	<i>(60 years)</i>
RED %	<i>(20%)</i>	<i>(30%)</i>	<i>(35%)</i>	<i>(45%)</i>	<i>(60%)</i>
RED YRS	<i>(2.7 years)</i>	<i>(4.5-7.5 yrs)</i>	<i>(8.8-14 yrs)</i>	<i>(18-27 yrs)</i>	<i>(36 years)</i>
<b>B</b>					
8-30 YRS	<i>(7.2 years)</i>	<i>(8-12 years)</i>	<i>(12-20 years)</i>	<i>(20-30 years)</i>	<i>(30 years)</i>
RED %	<i>(20%)</i>	<i>(30%)</i>	<i>(35%)</i>	<i>(45%)</i>	<i>(60%)</i>
RED YRS	<i>(1.4 years)</i>	<i>(2.4-3.6 yrs)</i>	<i>(4.2-7 yrs)</i>	<i>(9-13.5 yrs)</i>	<i>(18 years)</i>
<b>C</b>					
3-15 YRS	<b>(2.7 years)</b>	<u><i>(3-6 years)</i></u>	<i>(6-10 years)</i>	<i>(10-15 years)</i>	<i>(15 years)</i>
RED %	<b>(20%)</b>	<u><i>(30%)</i></u>	<i>(35%)</i>	<i>(45%)</i>	<i>(60%)</i>
RED YRS	<b>(.5 years)</b>	<u><i>(.9-1.8 yrs)</i></u>	<i>(2.1-3.5 yrs)</i>	<i>(4.5-6.8 yrs)</i>	<i>(9 years)</i>
<b>D</b>					
2-12 YRS	<b>(1.8 years)</b>	<b>(2-4 years)</b>	<u><i>(4-8 years)</i></u>	<i>(8-12 years)</i>	<i>(12 years)</i>
RED %	<b>(20%)</b>	<b>(30%)</b>	<u><i>(35%)</i></u>	<i>(45%)</i>	<i>(60%)</i>
RED YRS	<b>(.4 years)</b>	<b>(.6-1.2 yrs)</b>	<u><i>(1.4-2.8 yrs)</i></u>	<i>(3.6-5.4 yrs)</i>	<i>(7.2 yrs)</i>
<b>E</b>					
1-6 yrs	<b>(.9 years)</b>	<b>(1-2 years)</b>	<b>(2-4 years)</b>	<u><i>(4-6 years)</i></u>	<i>(6 years)</i>
RED %	<b>(20%)</b>	<b>(30%)</b>	<b>(35%)</b>	<u><i>(45%)</i></u>	<i>(60%)</i>
RED YRS	<b>(.2 years)</b>	<b>(.3-.6 yrs)</b>	<b>(.7-1.4 yrs)</b>	<u><i>(1.8-2.7 yrs)</i></u>	<i>(3.6 yrs)</i>

Presumptive Sentence-minimum sentence in range R E D Release Eligibility Date

***Bold Italic*** - Mandatory Continuous Confinement with the Department of Correction

*Italic* - Confinement with DOC available; alternative sentencing available if sentence 8 years or less

Underscore - Alternative Forms of Punishment Encouraged

**Bold** - Local Incarceration Required if County Contract

NOTE: First Degree Murder excluded from classification for sentencing purposes and sentenced solely according to First Degree Murder statute

Effective July 1, 2013

## **T. C. A. § 40-35-112**

### **§ 40-35-112. Sentence ranges**

(a) A **Range I** sentence is as follows:

- (1) For a Class A felony, not less than fifteen (15) nor more than twenty-five (25) years;
- (2) For a Class B felony, not less than eight (8) nor more than twelve (12) years;
- (3) For a Class C felony, not less than three (3) nor more than six (6) years;
- (4) For a Class D felony, not less than two (2) nor more than four (4) years; and
- (5) For a Class E felony, not less than one (1) nor more than two (2) years.

(b) A **Range II** sentence is as follows:

- (1) For a Class A felony, not less than twenty-five (25) nor more than forty (40) years;
- (2) For a Class B felony, not less than twelve (12) nor more than twenty (20) years;
- (3) For a Class C felony, not less than six (6) nor more than ten (10) years;
- (4) For a Class D felony, not less than four (4) nor more than eight (8) years; and
- (5) For a Class E felony, not less than two (2) nor more than four (4) years.

(c) A **Range III** sentence is as follows:

- (1) For a Class A felony, not less than forty (40) nor more than sixty (60) years;
- (2) For a Class B felony, not less than twenty (20) nor more than thirty (30) years;

- (3) For a Class C felony, not less than ten (10) nor more than fifteen (15) years;
- (4) For a Class D felony, not less than eight (8) nor more than twelve (12) years;  
and
- (5) For a Class E felony, not less than four (4) nor more than six (6) years.

Credits

1989 Pub.Acts, c. 591, § 6.

**T. C. A. § 40-35-120**

**§ 40-35-120. Repeat violent offenders; sentencing; appeals**

Currentness

- (a) A “**repeat violent offender**” is a defendant who:
  - (1) Is convicted in this state on or after July 1, 1994, of any offense classified in subdivision (b)(1) as a violent offense; and
  - (2) Has at least two (2) prior convictions for offenses classified in subdivision (b)(1) or (b)(2) as a violent offense; or
  - (3) Is convicted in this state on or after July 1, 1994, of any offense classified in subdivision (c)(1) as a violent offense; and
  - (4) Has at least one (1) conviction for an offense classified in subdivision (c)(1) or (c)(2) as a violent offense; or
  - (5) Is convicted in this state on or after July 1, 1995, of any offense classified in subdivision (d)(1) as a violent offense; and
  - (6) Has at least one (1) prior conviction for an offense classified in subdivision (d)(1) or (d)(2) as a violent offense with the exception of the prior offense of robbery by use of a deadly weapon as listed in § 40-35-118(a).
- (b)(1) For purposes of subdivisions (a)(1) and (a)(2), the following offenses are classified as **violent offenses**:
  - (A) First degree murder, including any attempt, solicitation or facilitation to commit first degree murder;

- (B) Second degree murder and any attempt or facilitation to commit second degree murder;
- (C) Especially aggravated kidnapping and any attempt or facilitation to commit especially aggravated kidnapping;
- (D) Especially aggravated robbery and any attempt or facilitation to commit especially aggravated robbery;
- (E) Aggravated rape and any attempt or facilitation to commit aggravated rape;
- (F) Rape of a child and any attempt or facilitation to commit rape of a child;
- (G) Aggravated arson and any attempt or facilitation to commit aggravated arson;
- (H) Aggravated kidnapping;
- (I) Aggravated robbery;
- (J) Rape;
- (K) Aggravated sexual battery;
- (L) Especially aggravated burglary;
- (M) Aggravated child abuse;
- (N) Aggravated sexual exploitation of minor; and
- (O) Especially aggravated sexual exploitation of a minor.

(2) For purposes of subdivision (a)(2), the offenses that were repealed on November 1, 1989, and are listed in § 40-35-118(a) as Class A or B felonies against a person are classified as violent offenses.

(c)(1) For purposes of subdivisions (a)(3) and (a)(4), the following offenses are classified as violent offenses:

- (A) First degree murder including any attempt, solicitation or facilitation to commit first degree murder;
- (B) Second degree murder;
- (C) Especially aggravated kidnapping;
- (D) Especially aggravated robbery;
- (E) Aggravated rape;
- (F) Rape of a child; and
- (G) Aggravated arson.

(2) For purposes of subdivision (a)(4), the offenses that were repealed on November 1, 1989, and are listed in § 40-35-118(a) as Class A felonies against a person are classified as violent offenses.

(d)(1) For purposes of subdivisions (a)(5) and (a)(6), the following offenses are classified as violent offenses:

- (A) First degree murder;
- (B) Second degree murder;
- (C) Especially aggravated kidnapping;
- (D) Especially aggravated robbery;
- (E) Aggravated rape;
- (F) Rape of a child;
- (G) Aggravated arson;
- (H) Aggravated kidnapping;
- (I) Rape;
- (J) Aggravated sexual battery;
- (K) Especially aggravated burglary;
- (L) Aggravated child abuse;
- (M) Aggravated sexual exploitation of a minor; and
- (N) Especially aggravated sexual exploitation of a minor.

(2) For purposes of subdivision (a)(6), the offenses that were repealed on November 1, 1989, and are listed in § 40-35-118(a) as Class A or B felonies against a person, with the exception of the offense of robbery by use of a deadly weapon, are classified as violent offenses.

(e) In determining the number of prior convictions a defendant has received:

(1) “Prior conviction” means a defendant serves and is released from a period of incarceration for the commission of an offense or offenses so that a defendant must:

(A) To qualify under subdivision (a)(1) and (a)(2), have served two (2) separate periods of incarceration for the commission of at least two (2) of the predicate offenses designated in subdivision (b)(1) or (b)(2) before committing an offense designated in subdivision (b)(1);

(B) To qualify under subdivision (a)(3) and (a)(4), at least one (1) separate period of incarceration for the commission of a predicate offense designated in subdivision (c)(1) or (c)(2) before committing an offense designated in subdivision (c)(1); or

(C) To qualify under subdivision (a)(5) and (a)(6), at least one (1) separate period of incarceration for the commission of a predicate offense designated in subdivision (d)(1) or (d)(2), with the exception of the prior offense of robbery by use of a deadly weapon as listed in § 40-35-118(a), before committing an offense designated in subdivision (d)(1);

(2) “Separate period of incarceration” includes a sentence to a community correction program pursuant to chapter 36 of this title, a sentence to split confinement pursuant to § 40-35-306 or a sentence to a periodic confinement pursuant to § 40-35-307. Any offense designated as a violent offense pursuant to subsection (b), (c) or (d) that is committed while incarcerated or committed while the prisoner is assigned to a program whereby the prisoner enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release, medical furlough or that is committed while on escape status from any correctional institution shall be considered as a separate period of incarceration;

(3) A finding or adjudication that a defendant committed an act as a juvenile that is designated a predicate offense under subsection (b), (c) or (d) if committed by an adult, and that resulted in a transfer of the juvenile to criminal court pursuant to § 37-1-134, or similar statutes of other states or jurisdictions, shall not be considered a prior conviction for the purposes of this section unless the juvenile was convicted of the predicate offense in a criminal court and sentenced to confinement in the department of correction; and

(4) “Prior convictions” include convictions under the laws of any other state, government or country that, if committed in this state, would have constituted a predicate offense in subsection (b), (c) or (d) if there are separate periods of incarceration in the other state as required by subdivision (e)(1). If a felony from a jurisdiction other than Tennessee is not a named predicate offense specified in subsection (b), (c) or (d) in this state and if the elements of the felony are the same as a designated predicate offense, it shall be considered a prior conviction; provided, that there are separate periods of incarceration in the other state as required in subdivision (e)(1).

(f) The court shall refuse to accept a plea agreement that fails to recommend that a defendant with a sufficient number of designated prior convictions be sentenced as a repeat violent offender. If the judge refuses to accept the plea agreement, this does not prevent the district attorney general, in accordance with Rule 7 of the Tennessee Rules of Criminal Procedure, from amending the indicted offense to an offense that is not designated as a violent offense in subsection (b) or (c).

(g) The court shall sentence a defendant who has been convicted of any offense listed in subdivision (b)(1), (c)(1) or (d)(1) to imprisonment for life without possibility of parole if the court finds beyond a reasonable doubt that the defendant is a repeat violent offender as defined in subsection (a).

(h) The finding that a defendant is or is not a repeat violent offender is appealable by either party.

(i)(1)(A) A charge as a repeat violent offender shall be tried within one hundred eighty (180) days of the arraignment on the indictment pursuant to Rule 10 of the Tennessee Rules of Criminal Procedure unless delay is caused by:

- (i) The defendant;
- (ii) An examination for competency;
- (iii) A competency hearing;
- (iv) An adjudication of incompetency for trial;
- (v) A continuance allowed after a court's determination of the defendant's physical incapacity for a trial; or
- (vi) An interlocutory appeal.

(B) A continuance may be granted to any party, including the court, for good cause shown.

(2) The district attorney general shall file a statement with the court and the defense counsel within forty-five (45) days of the arraignment pursuant to Rule 10 of the Rules of Criminal Procedure that the defendant is a repeat violent offender. The statement, which shall not be made known to the jury determining the guilt or innocence of the defendant, shall set forth the dates of the prior periods of incarceration, as well as the nature of the prior conviction offenses. If the notice is not filed within forty-five (45) days of the arraignment, the defendant shall be granted a continuance so that the defendant will have forty-five (45) days between receipt of notice and trial.

(3) Failure to comply with this subsection (i) does not require release of a person from custody or a dismissal of charges.

Credits - T. C. A. § 40-35-120, TN ST § 40-35-120 - Current with laws from the 2013 First Reg. Sess., eff. through April 25, 2013

## Texas

### **§ 12.42. Penalties for Repeat and Habitual Felony Offenders on Trial for First, Second, or Third Degree Felony**

Effective: September 1, 2011

V.T.C.A., Penal Code § 12.42

(a) Except as provided by Subsection (c)(2), if it is shown on the trial of a felony of the **third degree** that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under [12.35\(a\)](#), on conviction the defendant shall be punished for a felony of the second degree.

(b) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony of the **second degree** that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under [12.35\(a\)](#), on conviction the defendant shall be punished for a felony of the first degree.

(c)(1) If it is shown on the trial of a felony of the **first degree** that the defendant has previously been finally convicted of a felony other than a state jail felony punishable under [12.35\(a\)](#), on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 15 years. In addition to imprisonment, an individual may be punished by a fine not to exceed \$10,000.

(2) Notwithstanding Subdivision (1), a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life if:

(A) the defendant is convicted of an offense:

(i) under [20A.02\(a\)\(7\) or \(8\)](#), [.11\(a\)\(1\)](#), [.021](#), or [.011, Penal Code](#);

(ii) under [20.04\(a\)\(4\), Penal Code](#), if the defendant committed the offense with the intent to violate or abuse the victim sexually; or

(iii) under [30.02, Penal Code](#), punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (i) or (ii) or a felony under [21.11, Penal Code](#); and

(B) the defendant has been previously convicted of an offense:

(i) under [43.25](#) or [.26, Penal Code](#), or an offense under [43.23, Penal Code](#), punishable under Subsection (h) of that section;

(ii) under [20A.02\(a\)\(7\) or \(8\)](#), [.02](#), [.11](#), [.011](#), [.021](#), or [.02, Penal Code](#);

(iii) under [20.04\(a\)\(4\), Penal Code](#), if the defendant committed the offense with the intent to violate or abuse the victim sexually;

(iv) under [30.02, Penal Code](#), punishable under Subsection (d) of that section, if the defendant committed the offense with the intent to commit a felony described by Subparagraph (ii) or (iii); or



(v) under the laws of another state containing elements that are substantially similar to the elements of an offense listed in Subparagraph (i), (ii), (iii), or (iv).

(3) Notwithstanding Subdivision (1) or (2), a defendant shall be punished for a capital felony if it is shown on the trial of an offense under [22.021](#) otherwise punishable under Subsection (f) of that section that the defendant has previously been finally convicted of:

(A) an offense under [22.021](#) that was committed against a victim described by [22.021\(f\)\(1\)](#) or was committed against a victim described by [22.021\(f\)\(2\)](#) and in a manner described by [22.021\(a\)\(2\)\(A\)](#); or

(B) an offense that was committed under the laws of another state that:

(i) contains elements that are substantially similar to the elements of an offense under [22.021](#); and

(ii) was committed against a victim described by [22.021\(f\)\(1\)](#) or was committed against a victim described by [22.021\(f\)\(2\)](#) and in a manner substantially similar to a manner described by [22.021\(a\)\(2\)\(A\)](#).

(4) Notwithstanding Subdivision (1) or (2), a defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole if it is shown on the trial of an offense under [20A.03](#) or [.02](#) or [.021](#) that the defendant has previously been finally convicted of:

(A) an offense under [20A.03](#) or [.02](#) or [.021](#); or

(B) an offense that was committed under the laws of another state and that contains elements that are substantially similar to the elements of an offense under [20A.03](#) or [.02](#) or [.021](#).

(5) A previous conviction for a state jail felony punishable under [12.35\(a\)](#) may not be used for enhancement purposes under Subdivision (2).

(d) Except as provided by Subsection (c)(2) or (c)(4), if it is shown on the trial of a felony offense other than a state jail felony punishable under [12.35\(a\)](#) that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction the defendant shall be punished by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years. A previous conviction

for a state jail felony punishable under [12.35\(a\)](#) may not be used for enhancement purposes under this subsection.

(e) Repealed by Acts 2011, 82nd Leg., ch. 834 (H.B. 3384), § 6.

(f) For the purposes of Subsections (a), (b), (c)(1), and (e), an adjudication by a juvenile court under [54.03, Family Code](#), that a child engaged in delinquent conduct on or after January 1, 1996, constituting a felony offense for which the child is committed to the Texas Youth Commission under [54.04\(d\)\(2\)](#), [\(d\)\(3\)](#), or [\(m\), Family Code](#), or [54.05\(f\), Family Code](#), is a final felony conviction.

(g) For the purposes of Subsection (c)(2):

(1) a defendant has been previously convicted of an offense listed under Subsection (c)(2)(B) if the defendant was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the defendant was subsequently discharged from community supervision; and

(2) a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Subsection (c)(2)(B) is a conviction of an offense listed under Subsection (c)(2)(B).

Currentness - V. T. C. A., Penal Code § 12.42, TX PENAL § 12.42; Current through Chapters effective immediately through Chapter 36 of the 2013 Regular Session of the 83rd Legislature

## **Virginia**

### **§ 19.2-297.1. Sentence of person twice previously convicted of certain violent felonies**

VA Code Ann. § 19.2-297.1

A. Any person convicted of two or more separate acts of violence when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in [§ 53.1-151](#) between each conviction, shall, upon conviction of a third or subsequent act of violence, be sentenced to life imprisonment and

shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of two or more such acts of violence.

For the purposes of this section, “**act of violence**” means (i) any one of the following violations of Chapter 4 ([§ 18.2-30 et seq.](#)) of Title 18.2:

- a. First and second degree murder and voluntary manslaughter under Article 1 ([§ 18.2-30 et seq.](#));
- b. Mob-related felonies under Article 2 ([§ 18.2-38 et seq.](#));
- c. Any kidnapping or abduction felony under Article 3 ([§ 18.2-47 et seq.](#));
- d. Any malicious felonious assault or malicious bodily wounding under Article 4 ([§ 18.2-51 et seq.](#));
- e. Robbery under [§ 18.2-58](#) and carjacking under [§ 18.2-58.1](#);
- f. Except as otherwise provided in [§ 18.2-67.5:2](#) or [§ 18.2-67.5:3](#), criminal sexual assault punishable as a felony under Article 7 ([§ 18.2-61 et seq.](#)); or
- g. Arson in violation of [§ 18.2-77](#) when the structure burned was occupied or a Class 3 felony violation of [§ 18.2-79](#).

(ii) conspiracy to commit any of the violations enumerated in clause (i) of this section; and (iii) violations as a principal in the second degree or accessory before the fact of the provisions enumerated in clause (i) of this section.

B. Prior convictions shall include convictions under the laws of any state or of the United States for any offense substantially similar to those listed under “act of violence” if such offense would be a felony if committed in the Commonwealth. The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

C. Any person sentenced to life imprisonment pursuant to this section shall not be eligible for parole and shall not be eligible for any good conduct allowance or any earned sentence credits under Chapter 6 ([§ 53.1-186 et seq.](#)) of Title 53.1. However, any person subject to the provisions of this section, other than a person who was sentenced under [A of § 18.2-67.5:3](#) for criminal sexual assault convictions specified in subdivision f, (i) who has reached the age of sixty-five or older and who has served at least five years of the sentence imposed or (ii) who has reached the age of sixty or older and who has served at least ten years of the sentence imposed may petition the Parole Board for conditional release. The Parole Board shall promulgate regulations to implement the provisions of this

Currentness:

VA Code Ann. § 19.2-297.1, VA ST § 19.2-297.1

Current through the End of the 2013 Reg. Sess. and the End of the 2013 Sp. Sess.

I.