

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Everett**

A Bill

SENATE BILL 786

For An Act To Be Entitled

8 "AN ACT TO PROVIDE THAT A DEFENDANT FOUND GUILTY OF
9 CAPITAL MURDER SHALL BE PUNISHED ACCORDING TO ARKANSAS
10 CODE ANNOTATED §5-4-601 ET SEQ.; TO PROVIDE PROCEDURES FOR
11 APPEAL FROM A SENTENCE WHICH IS OUTSIDE THE PRESUMPTIVE
12 RANGE OF THE SENTENCING POLICIES AND STANDARDS; AND FOR
13 OTHER PURPOSES."

Subtitle

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16 "TO PROVIDE THAT A DEFENDANT GUILTY OF CAPITAL MURDER
17 SHALL BE PUNISHED ACCORDING TO A.C.A §5-4-601 AND TO
18 PROVIDE FOR SENTENCING APPEALS."

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

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22 SECTION 1. Arkansas Code Annotated §5-4-103 is amended to read as
23 follows:

24 "§5-4-103. Sentencing - Role of jury and court.

25 (a) *If upon a trial by jury a defendant is found guilty of an offense,*
26 *other than capital murder, the court shall fix punishment in a separate*
27 *proceeding as authorized by this chapter. If upon a trial by jury a defendant*
28 *is found guilty of capital murder, punishment shall be fixed pursuant to*
29 *Arkansas Code Annotated §5-4-601 et seq.*

30 (b) Except as provided by §§5-4-601 - 5-4-605 and 5-4-607 - 5-4-609,
31 the court shall fix punishment as authorized by this chapter in any case
32 where:

- 33 (1) The defendant pleads guilty to an offense; or
34 (2) The defendant's guilt is tried by the court; or
35 (3) The defendant's guilt is tried by a jury.

1 (c) Nothing herein shall be interpreted to prevent a plea of guilty or
2 nolo contendere wherein the sentence has been negotiated between the defendant
3 or his counsel and the prosecutor. In the event the trial court shall reject
4 such a negotiated sentence the defendant shall be allowed to withdraw his
5 plea."

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7 SECTION 2. Act 532 of the 1993 Regular Session is amended to add new
8 Sections (3)(A)(1) and (3)(A)(2) immediately following Section 3(A) to read as
9 follows:

10 "(1) Effective January 1, 1994 , there shall be no appeal from
11 sentencing except when the sentence imposed is outside the presumptive range
12 established for the applicable classification of the crime. An appeal may be
13 taken following imposition of a sentence which is outside the presumptive
14 range and is accompanied by written reasons for the departure. Either the
15 defense or the prosecution may appeal to the appellate courts of the State
16 which would hear any appeal of the conviction.

17 Grounds for appeal:

18 (a) Whether departure factors listed are supported by evidence;

19 (b) Whether departure factors relied upon which are not statutorily
20 listed are consistent with the Sentencing Policy adopted by the State;

21 (c) Whether the sentence imposed is clearly excessive or lenient in
22 light of the Sentencing Policy of the State.

23 (2) Effective January 1, 1994, dispositions by the reviewing court may
24 include affirming the sentence under review, reduction of the sentence under
25 review or reversing the sentence under review and remanding the case to the
26 sentencing court for resentencing."

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

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32 SECTION 4. If any provision of this act or the application thereof to
33 any person or circumstance is held invalid, such invalidity shall not affect
34 other provisions or applications of the act which can be given effect without
35 the invalid provision or application, and to this end the provisions of this

1 act are declared to be severable.

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

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/s/ Senator Everett

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As Engrossed: 3/18/93 3/22/93 3/23/93 3/30/93

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