

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/21/01 H4/4/01

A Bill

Act 1738 of 2001
HOUSE BILL 2384

5 By: Representatives J. Elliott, Hutchinson, Carson, *White, Jackson, W. Walker, T. Steele, Shoffner,*
6 *Green, Roebuck, Borhauer, Goss, Napper*
7 By: *Senators DeLay, Mahony*
8
9

For An Act To Be Entitled

11 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
12 CODE TO CLARIFY THE CRIMINAL OFFENSE OF RAPE AND
13 CREATE THE OFFENSE OF SEXUAL ASSAULT; AND FOR
14 OTHER PURPOSES.

Subtitle

17 AN ACT TO AMEND VARIOUS SECTIONS OF THE
18 ARKANSAS CODE TO CLARIFY THE CRIMINAL
19 OFFENSE OF RAPE AND CREATE THE OFFENSE
20 OF SEXUAL ASSAULT.
21
22

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

25 SECTION 1. Arkansas Code 5-14-103 is amended to read as follows:

26 5-14-103. Rape.

27 (a) A person commits rape if he engages in sexual intercourse or
28 deviate sexual activity with another person:

29 (1) By forcible compulsion; or

30 ~~(2) Not his spouse, who is a patient or resident of a hospital,~~
31 ~~nursing home, human development center, or other similar facility, and who is~~
32 ~~incapable of consent because he is mentally defective or mentally~~
33 ~~incapacitated; or~~

34 ~~(3)~~(2) Who is incapable of consent because he is physically
35 helpless, mentally defective or mentally incapacitated; or

36 ~~(4)~~(3) Who is less than fourteen (14) years of age. It is an

1 affirmative defense to prosecution under this subdivision (a) ~~(4)~~ (3) that the
 2 actor was not more than ~~two (2)~~ three (3) years older than the victim; ~~or~~
 3 ~~(5) Not his spouse who is less than sixteen (16) years of age~~
 4 ~~and who is incapable of consent because he is mentally defective or mentally~~
 5 ~~incapacitated.~~

6 (b) Rape is a Class Y felony.

7
 8 SECTION 2. Sexual assault in the first degree.

9 (a) A person commits sexual *assault* in the first degree if the person
 10 engages in sexual intercourse or deviate sexual activity with another person,
 11 not the person's spouse, who is less than eighteen (18) years of age and the
 12 person:

13 (1) Is employed with the Department of Correction, Department of
 14 Community Punishment, Department of Human Services, any city or county jail
 15 or juvenile detention facility, and the victim is in the custody of the
 16 Department of Correction, Department of Community Punishment, Department of
 17 Human Services, any city or county jail, or juvenile detention facility, or
 18 their contractors or agents;

19 (2) Is a professional under Arkansas Code 12-12-507(b) and is in
 20 a position of trust or authority over the victim *and uses the position to*
 21 *engage in sexual intercourse or deviate sexual activity;* or

22 (3) Is the victim's guardian, an employee in the victim's school
 23 or school district, a temporary caretaker, or a person in a position of trust
 24 or authority over the victim.

25 (b) Is it no defense to prosecution under this section that the victim
 26 consented to the conduct.

27 (c) It is an affirmative defense to prosecution under this section
 28 that the person was not more than three (3) years older than the victim.

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

30
 31 SECTION 3. Sexual assault in the second degree.

32 (a) A person commits sexual assault in the second degree if the
 33 person:

34 (1) Engages in sexual contact *with the sex organs of* another
 35 person by forcible compulsion; or

36 (2) Engages in sexual contact of genitalia with another person

1 who is incapable of consent because the person is physically helpless,
2 mentally defective, or mentally incapacitated; or

3 (3) Being eighteen (18) years of age or older, engages in sexual
4 contact with *the sex organs of* another person, not the person's spouse, who
5 is less than fourteen (14) years of age.

6 (4)(A) Engages in sexual contact with another person who is less
7 than eighteen (18) years of age and the person:

8 (i) Is employed with the Department of Correction,
9 Department of Community Punishment, any city or county jail or any juvenile
10 detention facility, and the minor is in custody at one of the facility
11 operated by the agency or contractor employing the person;

12 (ii) Is a professional under § 12-12-507(b) or is in
13 a position of trust or authority over the minor; or

14 (iii) Is the minor's guardian, an employee in the
15 minor's school or school district, or a temporary caretaker.

16 (B) For purposes of this subdivision (4), consent of the
17 minor is not a defense to prosecution.

18 (b) Sexual assault in the second degree is a Class B felony.

19
20 SECTION 4. Sexual assault in the third degree.

21 (a) A person commits sexual assault in the third degree if the person
22 engages in sexual intercourse or deviate sexual activity with another person,
23 not the person's spouse, and the person:

24 (1) Is employed with the Department of Correction, Department of
25 Community Punishment, Department of Human Services, any city or county jail,
26 and the victim is in the custody of the Department of Correction, Department
27 of Community Punishment, Department of Human Services, or any city or county
28 jail; or

29 (2) Is a professional under Arkansas Code 12-12-507(b) or a
30 member of the clergy, and is in a position of trust or authority over the
31 victim and uses the position to engage in sexual intercourse or deviate
32 sexual activity.

33 (b) Is it no defense to prosecution under this section that the victim
34 consented to the conduct.

35 (c) Sexual assault in the third degree is a Class C felony.

36

1 SECTION 5. Sexual assault in the fourth degree.

2 (a) A person commits sexual assault in the fourth degree if, being
3 twenty (20) years of age or older, the person engages in sexual intercourse,
4 deviate sexual activity, or sexual contact with another person, not the
5 person's spouse, who is less than sixteen (16) years of age.

6 (b) Sexual assault in the fourth degree is a Class A misdemeanor.

7
8 SECTION 6. Arkansas Code 5-14-104 is repealed.

9 ~~5-14-104. Carnal abuse in the first degree.~~

10 ~~(a) A person commits carnal abuse in the first degree if, being under~~
11 ~~the age of eighteen (18) years, he engages in sexual intercourse or deviate~~
12 ~~sexual activity with another person not his spouse who is less than fourteen~~
13 ~~(14) years old. It is an affirmative defense to prosecution under this~~
14 ~~subsection that the actor was not more than two (2) years older than the~~
15 ~~victim.~~

16 ~~(b) Carnal abuse in the first degree is a Class A felony.~~

17
18 SECTION 7. Arkansas Code 5-14-105 is repealed.

19 ~~5-14-105. Carnal abuse in the second degree.~~

20 ~~(a) A person commits carnal abuse in the second degree if he engages~~
21 ~~in sexual intercourse or deviate sexual activity with another person not his~~
22 ~~spouse who is incapable of consent because he is mentally defective or~~
23 ~~mentally incapacitated.~~

24 ~~(b) Carnal abuse in the second degree is a Class C felony.~~

25
26 SECTION 8. Arkansas Code 5-14-106 is repealed.

27 ~~5-14-106. Carnal abuse in the third degree.~~

28 ~~(a) A person commits carnal abuse in the third degree if, being twenty~~
29 ~~(20) years old or older, he engages in sexual intercourse or deviate sexual~~
30 ~~activity with another person not his spouse who is less than sixteen (16)~~
31 ~~years old.~~

32 ~~(b) Carnal abuse in the third degree is a Class D felony.~~

33
34 SECTION 9. Arkansas Code 5-14-107 is repealed.

35 ~~5-14-107. Sexual misconduct.~~

36 ~~(a) A person commits sexual misconduct if he engages in sexual~~

1 ~~intercourse or deviate sexual activity with another person not his spouse who~~
2 ~~is less than sixteen (16) years old.~~

3 ~~(b) Sexual misconduct is a Class A misdemeanor.~~

4
5 SECTION 10. Arkansas Code 5-14-108 is repealed.

6 ~~5-14-108. Sexual abuse in the first degree.~~

7 ~~(a) A person commits sexual abuse in the first degree if:~~

8 ~~(1) He engages in sexual contact with another person by forcible~~
9 ~~compulsion; or~~

10 ~~(2) He engages in sexual contact with another person who is~~
11 ~~incapable of consent because he is physically helpless; or~~

12 ~~(3) He engages in sexual contact with another person, not his~~
13 ~~spouse, who is a patient or resident of a hospital, nursing home, human~~
14 ~~development center, or other similar facility, and who is incapable of~~
15 ~~consent because he is mentally defective or mentally incapacitated; or~~

16 ~~(4) Being eighteen (18) years old or older, he engages in sexual~~
17 ~~contact with a person not his spouse who is less than fourteen (14) years~~
18 ~~old; or~~

19 ~~(5) He engages in sexual contact with a person who is less than~~
20 ~~sixteen (16) years of age and who is incapable of consent because he is~~
21 ~~mentally defective or mentally incapacitated.~~

22 ~~(b) Sexual abuse in the first degree is a Class C felony.~~

23
24 SECTION 11. Arkansas Code 5-14-109 is repealed.

25 ~~5-14-109. Sexual abuse in the second degree.~~

26 ~~(a) A person commits sexual abuse in the second degree if:~~

27 ~~(1) He or she engages in sexual contact with another person not~~
28 ~~his or her spouse who is incapable of consent because he or she is mentally~~
29 ~~defective or mentally incapacitated;~~

30 ~~(2) Being less than eighteen (18) years old, he or she engages~~
31 ~~in sexual contact with a person not his or her spouse who is less than~~
32 ~~fourteen (14) years old. It is an affirmative defense to prosecution under~~
33 ~~this subdivision (a)(2) that the actor was not more than two (2) years older~~
34 ~~than the victim; or~~

35 ~~(3) He or she, being employed directly or through contract with~~
36 ~~the Department of Correction or the Department of Community Punishment, or~~

1 with any city or county jail, engages in sexual contact for the purpose of
2 sexual gratification with any person in the custody of the Department of
3 Correction or the Department of Community Punishment or within any city or
4 county jail, the consent of the person in custody notwithstanding.

5 (b) ~~Sexual abuse in the second degree is a Class A misdemeanor.~~

6
7 SECTION 12. Arkansas Code 5-14-120 is repealed.

8 ~~5-14-120. Violation of a minor in the first degree.~~

9 (a) ~~A person commits the offense of violation of a minor in the first
10 degree if he engages in sexual intercourse or deviate sexual activity with
11 another person not his spouse, who is more than thirteen (13) years of age
12 and less than eighteen (18) years of age, and the actor is the minor's
13 guardian, an employee in the minor's school or school district, a temporary
14 caretaker, or a person in a position of trust or authority of the minor.~~

15 (b) ~~Violation of a minor in the first degree is a Class C felony.~~

16
17 SECTION 13. Arkansas Code 5-14-121 is repealed.

18 ~~5-14-121. Violation of a minor in the second degree.~~

19 (a) ~~A person commits the offense of violation of a minor in the second
20 degree if he engages in sexual contact with another person not his spouse,
21 who is more than thirteen (13) years of age and less than eighteen (18) years
22 of age, and the actor is the minor's guardian, an employee in the minor's
23 school or school district, a temporary caretaker, or a person in a position
24 of trust or authority of the minor.~~

25 (b) ~~Violation of a minor in the second degree is a Class D felony.~~

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27
28 */s/ J. Elliott, et al.*

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31 APPROVED: 4/18/2001