

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 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: S3/31/03*

# A Bill

Act 1323 of 2003  
HOUSE BILL 1935

5 By: Representative Adams  
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7

## For An Act To Be Entitled

9 AN ACT TO EXPAND THE OFFENSE OF SEXUAL ASSAULT IN  
10 THE SECOND DEGREE TO INCLUDE A PERSON LESS THAN  
11 EIGHTEEN (18) YEARS OLD WHO ENGAGES IN SEXUAL  
12 CONTACT WITH A PERSON NOT THE PERSON'S SPOUSE WHO  
13 IS LESS THAN FOURTEEN (14) YEARS OLD; AND FOR  
14 OTHER PURPOSES.

## Subtitle

15  
16 AN ACT TO EXPAND THE OFFENSE OF SEXUAL  
17 ASSAULT IN THE SECOND DEGREE TO INCLUDE  
18 A PERSON LESS THAN EIGHTEEN (18) YEARS  
19 OLD WHO ENGAGES IN SEXUAL CONTACT WITH A  
20 PERSON NOT THE PERSON'S SPOUSE WHO IS  
21 LESS THAN FOURTEEN (14) YEARS OLD.  
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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27 SECTION 1. Arkansas Code § 5-14-125 is amended to read as follow:  
28 5-14-125. Sexual assault in the second degree.

29 (a) A person commits sexual assault in the second degree if the  
30 person:

31 (1) Engages in sexual contact with ~~the sex organs of~~ another  
32 person by forcible compulsion; ~~or~~

33 (2) Engages in sexual contact ~~of genitalia~~ with another person  
34 who is incapable of consent because the person is physically helpless,  
35 mentally defective, or mentally incapacitated;

36 (3) Being eighteen (18) years of age or older, engages in sexual



1 contact with ~~the sex organs of~~ another person, not the person's spouse, who  
2 is less than fourteen (14) years of age; ~~or~~

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

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

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

11 (iii) Is the minor's guardian, an employee in the  
12 minor's school or school district, ~~or a temporary caretaker~~ or a person in a  
13 position of trust or authority over the minor.

14 (B) For purposes of subdivision (a)(4)(A) of this section,  
15 consent of the minor is not a defense to prosecution; or

16 (5)(A) Being less than eighteen (18) years old, the person  
17 engages in sexual contact with a person not the person's spouse who is less  
18 than fourteen (14) years old.

19 (B)(i) It is an affirmative defense to prosecution  
20 under this section that the person was not more than three (3) years older  
21 than the victim if the victim is less than twelve (12) years of age.

22 (ii) It is an affirmative defense to prosecution  
23 under this section that the person was not more than four (4) years older  
24 than the victim if the victim is twelve (12) years of age or older

25 (b)(1) Sexual assault in the second degree is a Class B felony.

26 (2) Sexual assault in the second degree is a Class D felony if  
27 committed by a person less than eighteen (18) years of age with a person not  
28 the person's spouse who is less than fourteen (14) years of age.

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30 SECTION 2. Arkansas Code § 5-14-102 is amended to read as follows:  
31 5-14-102. In general.

32 (a) The definition of an offense excluding conduct with a spouse shall  
33 not be construed to preclude accomplice liability of a spouse.

34 (b) When the criminality of conduct depends on a child being below the  
35 age of fourteen (14) years and the actor is twenty (20) years of age or  
36 older, it is no defense that the actor did not know the age of the child, or

1 reasonably believed the child to be fourteen (14) years of age or older.

2 (c) When criminality of conduct depends on a child being below a  
3 ~~critical age older than~~ the age of fourteen (14) years and the actor is under  
4 the age of twenty (20) years, it is an affirmative defense that the actor  
5 reasonably believed the child to be of the critical age or above. The actor  
6 may be guilty, however, of the lesser offense defined by the age that he  
7 reasonably believed the child to be.

8 (d) When criminality of conduct depends on a child being below a  
9 critical age older than fourteen (14) years, it is an affirmative defense  
10 that the actor reasonably believed the child to be of the critical age or  
11 above. The actor may be guilty, however, of the lesser offense defined by  
12 the age that he reasonably believed the child to be.

13 ~~(d)~~(e) When criminality of conduct depends on a victim being incapable  
14 of consent because he is mentally defective or mentally incapacitated, it is  
15 an affirmative defense that the actor reasonably believed that the victim was  
16 capable of consent.

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18 /s/ Adams

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21 APPROVED: 4/14/2003  
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