

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H2/26/97 S3/4/97

## A Bill

ACT 831 OF 1997  
HOUSE BILL 1719

4  
5 By: Representative Lynn  
6  
7

### For An Act To Be Entitled

8  
9 "AN ACT TO AMEND ARKANSAS CODE ANNOTATED §§ 5-14-103 AND  
10 5-14-108 TO PROTECT FROM RAPE AND SEXUAL ABUSE THOSE  
11 PERSONS WHO ARE INSTITUTIONALIZED AND WHO ARE INCAPABLE OF  
12 CONSENT BECAUSE THEY ARE MENTALLY DEFECTIVE OR MENTALLY  
13 INCAPACITATED; AND FOR OTHER PURPOSES."  
14

### Subtitle

15  
16 "TO PROTECT FROM RAPE AND SEXUAL ABUSE  
17 THOSE PERSONS WHO ARE INSTITUTIONALIZED  
18 AND WHO ARE INCAPABLE OF CONSENT"  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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22 SECTION 1. Arkansas Code Annotated § 5-14-103 is amended to read as  
23 follows:

24 "5-14-103. Rape.

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

27 (1) By forcible compulsion; or

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

32 ~~—————(2)(3)~~ Who is incapable of consent because he is physically  
33 helpless; or

34 ~~—————(3)(4)~~ Who is less than fourteen (14) years of age. It is an  
35 affirmative defense to prosecution under this subdivision that the actor was  
36 not more than two (2) years older than the victim; or

1 \_\_\_\_\_(4)(5) Not his spouse who is less than sixteen (16) years of age  
2 and who is incapable of consent because he is mentally defective or mentally  
3 incapacitated.

4 (b) Rape is a Class Y felony."  
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6 SECTION 2. Arkansas Code Annotated 5-14-108 is amended to read as  
7 follows:

8 "5-14-108. Sexual abuse in the first degree.

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

10 (1) He engages in sexual contact with another person by forcible  
11 compulsion; or

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

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

18 \_\_\_\_\_(3)(4) Being eighteen (18) years old or older, he engages in  
19 sexual contact with a person not his spouse who is less than fourteen (14)  
20 years old; or

21 \_\_\_\_\_(4)(5) He engages in sexual contact with a person who is less  
22 than sixteen (16) years of age and who is incapable of consent because he is  
23 mentally defective or mentally incapacitated.

24 (b) Sexual abuse in the first degree is a Class C felony."  
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26 SECTION 3. All provisions of this act of a general and permanent nature  
27 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code  
28 Revision Commission shall incorporate the same in the Code.  
29

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

36 SECTION 5. All laws and parts of laws in conflict with this act are

1 hereby repealed.

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3           SECTION 6. EMERGENCY. It is found and determined by the General  
4 Assembly of the State of Arkansas that those persons who are institutionalized  
5 in hospitals and human development centers and who are incapable of consent  
6 are not adequately protected by current rape and sexual abuse statutes.  
7 Therefore an emergency is declared to exist and this act being immediately  
8 necessary for the preservation of the public peace, health and safety shall  
9 become effective on the date of its approval by the Governor. If the bill is  
10 neither approved nor vetoed by the Governor, it shall become effective on the  
11 expiration of the period of time during which the Governor may veto the bill.  
12 If the bill is vetoed by the Governor and the veto is overridden, it shall  
13 become effective on the date the last house overrides the veto.

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*/s/Rep. Lynn*

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APPROVED:3-26-97

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