

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

A Bill

Act 1390 of 2003
HOUSE BILL 1909

5 By: Representative Elliott
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 CODE TO REFLECT CHANGES IN SEX OFFENSES ENACTED
11 IN 2001; AND FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO AMEND VARIOUS SECTIONS OF THE
14 ARKANSAS CODE TO REFLECT CHANGES IN SEX
15 OFFENSES ENACTED IN 2001.
16
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18

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

21 SECTION 1. Arkansas Code § 5-1-109(h), concerning statute of
22 limitations for certain criminal offenses, is amended to read as follows:

23 (h) If the period prescribed in subsection (b) of this section has
24 expired, a prosecution may nevertheless be commenced for violations of the
25 following offenses if, when the alleged violation occurred, the offense was
26 committed against a minor, the violation has not previously been reported to
27 a law enforcement agency or prosecuting attorney, and the period prescribed
28 in subsection (b) of this section has not expired since the victim has
29 reached the age of eighteen (18):

- 30 (1) Battery in the first and second degrees as prohibited in §§
31 5-13-201 and 5-13-202;
32 (2) Aggravated assault as prohibited in § 5-13-204;
33 (3) Terroristic threatening in the first degree as prohibited in
34 § 5-13-301;
35 (4) Kidnapping as prohibited in § 5-11-102;
36 (5) False imprisonment in the first degree as prohibited in § 5-



1 11-103;

2 (6) Permanent detention or restraint as prohibited in § 5-11-
3 106;

4 (7) Rape and carnal abuse in the first and second degrees as
5 prohibited in §§ 5-14-103—5-14-105;

6 (8) ~~Sexual abuse in the first degree as prohibited in § 5-14-108~~
7 Sexual assault in the first degree as prohibited in § 5-14-124;

8 (9) ~~Violation of a minor in the first and second degrees as~~
9 ~~prohibited in §§ 5-14-120 and 5-14-121~~ Sexual assault in the second degree as
10 prohibited in § 5-14-125;

11 (10) Sexual assault in the third degree as prohibited in § 5-14-
12 126;

13 (11) Sexual assault in the fourth degree as prohibited in § 5-
14 14-127;

15 ~~(10)~~(12) Incest as prohibited in § 5-26-202;

16 ~~(11)~~(13) Endangering the welfare of a minor in the first degree
17 as prohibited in § 5-27-203;

18 ~~(12)~~(14) Permitting child abuse as prohibited in § 5-27-
19 221(a)(1) and (3);

20 ~~(13)~~(15) Engaging children in sexually explicit conduct for use
21 in visual or print medium, transportation of minors for prohibited sexual
22 conduct, use of a child or consent to use of a child in sexual performance,
23 and producing, directing, or promoting sexual performance by a child, as
24 prohibited in §§ 5-27-303, 5-27-305, 5-27-402, and 5-27-403; and

25 ~~(14)~~(16) Criminal attempt, criminal solicitation, or criminal
26 conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401 to
27 commit any of the offenses listed in this subsection.

28
29 SECTION 2. Arkansas Code § 5-4-501(d), concerning enhanced sentences
30 for certain violent felonies, is amended to read as follows:

31 (d)(1) A defendant who is convicted of a felony involving violence
32 enumerated in subdivision (d)(2) of this section and who has previously been
33 convicted of two (2) or more of the felonies involving violence enumerated in
34 subdivision (d)(2) of this section shall be sentenced to an extended term of
35 imprisonment without eligibility except under § 16-93-1302 for parole or
36 community punishment transfer as follows:

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

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

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

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

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

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

15 (2) For the purposes of this subsection, a felony involving
16 violence shall mean:

17 (A) Any of the following felonies:

18 (i) Murder in the first degree, § 5-10-102;

19 (ii) Murder in the second degree, § 5-10-103;

20 (iii) Kidnapping, § 5-11-102;

21 (iv) Aggravated robbery, § 5-12-103;

22 (v) Rape, § 5-14-103;

23 (vi) Battery in the first degree, § 5-13-201;

24 (vii) Terroristic act, § 5-13-310;

25 (viii) Sexual abuse in the first degree, § 5-14-108;

26 (ix) Violation of a minor in the first degree, § 5-
27 14-120;

28 (x) Sexual assault in the first degree, § 5-14-124;

29 (xi) Sexual assault in the second degree, § 5-14-
30 125;

31 ~~(xii)~~ Domestic battering in the first degree, §
32 5-26-303;

33 ~~(xiii)~~ Unlawful discharge of a firearm from a
34 vehicle, § 5-74-107;

35 ~~(xiv)~~ Criminal use of prohibited weapons, § 5-
36 73-104, involving activities making it a Class B felony; or

1 ~~(xiii)~~(xv) A felony attempt, solicitation, or
2 conspiracy to commit:

- 3 (a) Capital murder, § 5-10-101;
- 4 (b) Murder in the first degree, § 5-10-102;
- 5 (c) Murder in the second degree, § 5-10-103;
- 6 (d) Kidnapping, § 5-11-102;
- 7 (e) Aggravated robbery, § 5-12-103;
- 8 (f) Rape, § 5-14-103;
- 9 (g) Battery in the first degree, § 5-13-201;

10 or

- 11 (h) Domestic battering in the first degree, §
12 5-26-303; or

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

15 (3)(A) The following procedure shall govern trials at which a
16 sentence to an extended term of imprisonment is sought pursuant to this
17 subsection:

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

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

28 (b) The defendant shall have the right to hear
29 and controvert this evidence and to offer evidence in his or her support;

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

33 (b) The jury may be advised as to the nature
34 of the previous convictions and the date and place thereof; and

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

1 (B) The determination of whether a felony conviction from
2 another jurisdiction is comparable to one of the enumerated felonies
3 involving violence under Arkansas criminal law shall lie within the
4 discretion of the trial judge at the time of sentencing.

5
6 SECTION 3. Arkansas Code § 12-12-401 is amended to read as follows:
7 12-12-401. Definitions.

8 As used in this subchapter, unless the context otherwise requires:

9 (1)(A) "Appropriate emergency medical-legal examinations" means
10 health care delivered with emphasis on the collection of evidence for the
11 purpose of prosecution.

12 (B) It shall include, but not be limited to, the
13 appropriate components contained in an evidence collection kit for sexual
14 assault examination distributed by the Forensic Biology Section of the State
15 Crime Laboratory;

16 (2) "Licensed health care provider" means a person licensed in a
17 health care field who conducts medical-legal examinations;

18 (3) "Medical facility" means any health care provider that is
19 currently licensed by the Department of Health and providing emergency
20 services; and

21 (4) "Victim" means any person who has been a victim of any
22 alleged sexual assault or incest as defined by §§ 5-14-101 through 5-14-127,
23 ~~5-14-112, 5-14-120, 5-14-122,~~ and 5-26-202.

24
25 SECTION 4. Arkansas Code 12-12-903(12), concerning definition of sex
26 offense under the "Sex Offender Registration Act of 1997", is amended to read
27 as follows:

28 (12) (A) "Sex offense" for the purposes of this subchapter includes,
29 but is not limited to:

30 (i)(a) Rape, § 5-14-103;

31 ~~(b) Carnal abuse in the first degree, § 5-14-104~~
32 ~~{repealed};~~

33 ~~(c) Carnal abuse in the second degree, § 5-14-105~~
34 ~~{repealed};~~

35 ~~(d) Carnal abuse in the third degree, § 5-14-106~~
36 ~~{repealed};~~

- 1 ~~(e) Sexual misconduct, § 5-14-107;~~
- 2 ~~(f) Sexual abuse in the first degree, § 5-14-108;~~
- 3 ~~(g) Sexual abuse in the second degree, § 5-14-109;~~
- 4 ~~(h) Sexual solicitation of a child, § 5-14-110;~~
- 5 ~~(i) Violation of a minor in the first degree, § 5-~~
- 6 ~~14-120;~~
- 7 ~~(j) Violation of a minor in the second degree, § 5-~~
- 8 ~~14-121;~~
- 9 (b) Sexual indecency with a child, § 5-14-110;
- 10 (c) Sexual assault in the first degree, § 5-14-124;
- 11 (d) Sexual assault in the second degree, § 5-14-125;
- 12 (e) Sexual assault in the third degree, § 5-14-126;
- 13 (f) Sexual assault in the fourth degree, § 5-14-127;
- 14 ~~(k)(g)~~ Incest, § 5-26-202;
- 15 ~~(l)(h)~~ Engaging children in sexually explicit
- 16 conduct for use in visual or print medium, § 5-27-303;
- 17 ~~(m)(i)~~ Transportation of minors for prohibited
- 18 sexual conduct, § 5-27-305;
- 19 ~~(n)(j)~~ Employing or consenting to use of a child in
- 20 sexual performance, § 5-27-402;
- 21 ~~(o)(k)~~ Pandering or possessing visual or print
- 22 medium depicting sexually explicit conduct involving a child, § 5-27-304;
- 23 ~~(p)(l)~~ Producing, directing, or promoting sexual
- 24 performance, § 5-27-403;
- 25 ~~(q)(m)~~ Promoting prostitution in the first degree, §
- 26 5-70-104;
- 27 ~~(r)(n)~~ Stalking, when ordered by the sentencing
- 28 court to register as a sex offender, § 5-71-229;
- 29 ~~(s)(o)~~ Indecent exposure to a person under the age
- 30 of twelve (12) years, § 5-14-112(b); or
- 31 ~~(t)(p)~~ Exposing another person to human
- 32 immunodeficiency virus, when ordered by the sentencing court to register as a
- 33 sex offender, § 5-14-123;
- 34 ~~(u)(q)~~ Kidnapping pursuant to § 5-11-102(a) when the
- 35 victim is a minor and the offender is not the parent of the victim;
- 36 ~~(v)(r)~~ False imprisonment in the first degree and

1 false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the
2 victim is a minor and the offender is not the parent of the victim;

3 ~~(w)~~(s) Permitting abuse of a child pursuant to § 5-
4 27-221;

5 ~~(x)~~(t) Computer child pornography; § 5-27-603; and

6 ~~(y)~~(u) Computer exploitation of a child in the first
7 degree, § 5-27-605(a).

8 (ii) An attempt, solicitation, or conspiracy to commit any
9 of the offenses enumerated in subdivision (12)(A)(i) of this section;

10 (iii) An adjudication of guilt for an offense of the law
11 of another state, for a federal offense, for a tribal court offense, or for a
12 military offense:

13 (a) Which is similar to any of the offenses
14 enumerated in subdivision (12)(A)(i) of this section; or

15 (b) When that adjudication of guilt requires
16 registration under another state's sex offender registration laws; or

17 (c) A violation of any former law of this state that
18 is substantially equivalent to any of the offenses enumerated in subdivision
19 (12)(A) of this section.

20 (B)(i) The sentencing court has the authority to order the
21 registration of any offender shown in court to have attempted to commit or to
22 have committed a sex offense, even though the offense is not enumerated in
23 subdivision (12)(A)(i) of this section.

24 (ii) This authority is limited to sex offenses enacted or
25 amended at a later date by the General Assembly unless the General Assembly
26 expresses its intent not to consider the offense to be a true sex offense for
27 the purposes of this subchapter;

28
29 SECTION 5. Arkansas Code 12-12-1103(10), concerning the definition of
30 sex offense under the "DNA Detection of Sexual and Violent Offenders Act", is
31 amended to read as follows:

32 (10) "Sex offense" means:

33 (A)(i) Rape - § 5-14-103;

34 ~~(ii) Carnal abuse in the first degree — § 5-14-104;~~

35 ~~(iii) Carnal abuse in the second degree — § 5-14-105;~~

36 ~~(iv) Carnal abuse in the third degree — § 5-14-106;~~

- 1 ~~(v) Sexual misconduct — § 5-14-107;~~
- 2 ~~(vi) Sexual abuse in the first degree — § 5-14-108;~~
- 3 ~~(vii) Sexual abuse in the second degree — § 5-14-109;~~
- 4 ~~(viii) Sexual solicitation of a child — § 5-14-110;~~
- 5 ~~(ix) Violation of a minor in the first degree — § 5-14-~~
- 6 ~~120;~~
- 7 ~~(x) Violation of a minor in the second degree — § 5-14-~~
- 8 ~~121;~~
- 9 (ii) Sexual indecency with a child, § 5-14-110;
- 10 (iii) Sexual assault in the first degree, § 5-14-124;
- 11 (iv) Sexual assault in the second degree, § 5-14-125;
- 12 (v) Sexual assault in the third degree, § 5-14-126;
- 13 (vi) Sexual assault in the fourth degree, § 5-14-127;
- 14 ~~(xi)-(vii)~~ Incest - § 5-26-202;
- 15 ~~(xii)-(viii)~~ Engaging children in sexually explicit conduct
- 16 for use in visual or print medium - § 5-27-303;
- 17 ~~(xiii)-(vix)~~ Transportation of minors for prohibited sexual
- 18 conduct - § 5-27-305;
- 19 ~~(xiv)-(x)~~ Employing or consenting to use of child in sexual
- 20 performance - § 5-27-402;
- 21 ~~(xv)-(xi)~~ Producing, directing, or promoting sexual
- 22 performance - § 5-27-403;
- 23 ~~(xvi)-(xii)~~ Promoting prostitution in the first degree - §
- 24 5-70-104;
- 25 ~~(xvii)-(xiii)~~ Stalking - § 5-71-229;
- 26 (B) An attempt, solicitation, or conspiracy to commit any of the
- 27 offenses ~~enumerated~~ enumerated in subdivision (10)(A) of this section; or
- 28 (C) A violation of any former law of this state which is
- 29 substantially equivalent to any of the offenses enumerated ~~in subdivision~~ in
- 30 subdivision (10)(A) of this section; and

31

32 SECTION 6. Arkansas Code § 16-82-101(b), concerning testing for human

33 immunodeficiency virus for certain sex offenders, is amended to read as

34 follows:

35 (b)(1) Any person arrested and charged with violating §§ 5-14-103, —

36 ~~5-14-109, §§ 5-14-120 — 5-14-122, 5-14-110, 5-14-124, 5-14-125, 5-14-126, 5-~~

1 14-127, 5-26-202 and § 5-70-102 may be required by the court having
 2 jurisdiction of the criminal prosecution, upon a finding of reasonable cause
 3 to believe that the person committed the offense and subject to
 4 constitutional limitations, to be tested for the presence of HIV or any
 5 antibody to HIV, unless the court determines that testing the defendant would
 6 be inappropriate and documents the reasons for that determination in the
 7 court record.

8 (2) The test shall be confidentially administered by a licensed
 9 physician, the Department of Health, or a local health department.

10
 11 SECTION 7. Arkansas Code § 16-90-901(b), concerning expungement and
 12 sealing of criminal records, is amended to read as follows:

13 (b) For purposes of this subchapter, "sexual offense" shall be defined
 14 as conduct prohibited by ~~§§ 5-14-103, 5-14-108, 5-14-110, 5-14-120, and 5-14-~~
 15 ~~121.~~ §§ 5-14-101 through 5-14-127.

16
 17 SECTION 8. Arkansas Code § 16-90-1101, concerning the definition of
 18 sex offense for rights of crime victims, is amended to read as follows:

19 (6) "Sex offense" means:

- 20 (A) Rape, § 5-14-103;
- 21 ~~(B) Carnal abuse in the first degree, § 5-14-104;~~
- 22 ~~(C) Carnal abuse in the second degree, § 5-14-105;~~
- 23 ~~(D) Carnal abuse in the third degree, § 5-14-106;~~
- 24 ~~(E) Sexual misconduct, § 5-14-107;~~
- 25 ~~(F) Sexual abuse in the first degree, § 5-14-108;~~
- 26 ~~(G) Sexual abuse in the second degree, § 5-14-109;~~
- 27 ~~(H) Sexual solicitation of a child, § 5-14-110;~~
- 28 ~~(I) Violation of minor in the first degree, § 5-14-120;~~
- 29 ~~(J) Violation of a minor in the second degree, § 5-14-121;~~
- 30 (B) Sexual indecency with a child, § 5-14-110;
- 31 (C) Sexual assault in the first degree, § 5-14-124;
- 32 (D) Sexual assault in the second degree, § 5-14-125;
- 33 (E) Sexual assault in the third degree, § 5-14-126;
- 34 (F) Sexual assault in the fourth degree, § 5-14-127;
- 35 ~~(K)(G) Incest, § 5-26-202;~~
- 36 ~~(L)(H) Engaging children in sexually explicit conduct for use in~~

1 visual or print medium, § 5-27-303;

2 ~~(M)~~(I) Transportation of minors for prohibited sexual conduct, §
3 5-27-305;

4 ~~(N)~~(J) Employing or consenting use of child in sexual
5 performance, § 5-27-402;

6 ~~(O)~~(K) Producing, directing or promoting a sexual performance, §
7 5-27-403;

8 ~~(P)~~(L) Promoting prostitution in the first degree, § 5-70-104;

9 ~~(Q)~~(M) Stalking, § 5-71-229;

10 ~~(R)~~(N) An attempt, solicitation, or conspiracy to commit any of
11 the offenses enumerated in this subdivision (6);

12 ~~(S)~~(O) An adjudication of guilt for an offense of the law of
13 another state, for a federal offense, or for a military offense, which is
14 substantially equivalent to any of the offenses enumerated in this
15 subdivision (6);

16 ~~(T)~~(P) A violation of any former law of this state which is
17 substantially equivalent to any of the offenses enumerated in this
18 subdivision (6);

19

20 SECTION 9. Arkansas Code § 16-93-206(c)(1), concerning eligibility for
21 transfer to the Department of Community Correction by the Post Prison
22 Transfer Board, is amended to read as follows:

23 (c)(1) Persons who commit the following felonies on or after January
24 1, 1994, shall be eligible to be considered for discretionary transfer to the
25 Department of Community Correction by the Post Prison Transfer Board after
26 having served one-third (1/3) or one-half (1/2), with credit for meritorious
27 good time, of their sentences, depending on the seriousness determination
28 made by the Arkansas Sentencing Commission, or one-half (1/2), with credit
29 for meritorious good time, of the time to which their sentences are commuted
30 by executive clemency:

31 (A) Any homicide, §§ 5-10-101 - 5-10-105;

32 (B) ~~Sexual abuse in the first degree, § 5-14-108~~ Sexual
33 assault in the second degree, § 5-14-125;

34 (C) Battery in the first degree, § 5-13-201;

35 (D) Domestic battering in the first degree, § 5-26-303;

36 (E) The following Class Y felonies:

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(i) Kidnapping, § 5-11-102;

(ii) Rape, § 5-14-103;

(iii) Aggravated robbery, § 5-12-103;

(iv) Causing a catastrophe, § 5-38-202(a);

(F) Engaging in a continuing criminal enterprise, § 5-64-

414; or

(G) Simultaneous possession of drugs and firearms, § 5-74-

106.

APPROVED: 4/15/2003