

ARKANSAS SENATE
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of Senate Bill No. 863

"AN ACT TO INCREASE THE PENALTY FOR INCEST IF THE VICTIM IS UNDER
SIXTEEN AND THE PERPETRATOR OVER TWENTY-ONE."

Amendment No. 1 to Senate Bill No. 863.

Amend Senate Bill No. 863 as originally introduced:

Delete the title in its entirety and substitute the following:

"AN ACT CONCERNING INCEST, SEXUAL ASSAULT IN THE FIRST DEGREE, AND RAPE; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute the following:

"AN ACT CONCERNING INCEST, SEXUAL ASSAULT IN THE FIRST DEGREE, AND RAPE."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 5-26-202 is amended to read as follows:
5-26-202. Incest.

(a) A person commits incest if, being sixteen (16) years of age or older, he purports to marry, has sexual intercourse with, or engages in deviate sexual activity with a person ~~he~~ eighteen (18) years or older, whom the actor knows to be:

- (1) An ancestor or a descendant; or
- (2) A stepchild or adopted child; or
- (3) A brother or sister of the whole or half blood; or
- (4) An uncle, aunt, nephew, or niece; or
- (5) A stepgrandchild or adopted grandchild.

(b) The relationships referred to in this section shall include blood relationship without regard to legitimacy.

(c) ~~Incest is a Class C felony; however, incest is a Class A felony if the victim is under sixteen (16) years of age and the perpetrator is over twenty one (21) years of age at the time of the offense.~~

SECTION 2. Arkansas Code § 5-14-124 is amended to read as follows:
5-14-124. Sexual assault in the first degree.

(a) A person commits sexual assault in the first degree if the person



engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, who is less than eighteen (18) years of age and the ~~person~~ actor:

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

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

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

(b) It is no defense to prosecution under this section that the victim consented to the conduct.

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

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

SECTION 3. Arkansas Code § 5-14-103 is amended to read as follows:
5-14-103. Rape.

(a)(1) A person commits rape if he engages in sexual intercourse or deviate sexual activity with another person:

(A) By forcible compulsion; or

(B) Who is incapable of consent because he is physically helpless, mentally defective, or mentally incapacitated; or

(C)~~(i)~~ Who is less than fourteen (14) years of age, and the actor is more than three (3) years older than the victim; or

~~(ii) It is an affirmative defense to prosecution under subdivision (a)(1)(C)(i) of this section that the actor was not more than three (3) years older than the victim.~~

(D) Who is less than eighteen (18) years of age, and the actor:

(i) Is the victim's guardian;

(ii) Is the victim's uncle, aunt, or grandparent;

(iii) Is the victim's brother or sister, of the whole or half blood or by adoption, and is more than three (3) years older than the victim; or

(iv) Is the victim's nephew, niece, or cousin and is more than three (3) years older than the victim.

(2) It is no defense to prosecution under subdivision (a)(1)(C) or subdivision (a)(1)(D) that the victim consented to the conduct.

~~(2)(3)~~ Rape is a Class Y felony.

(b)(1) A court may issue a permanent no contact order when:

(A) A defendant pleads guilty or nolo contendere; or

(B) All the defendant's appeals have been exhausted and the defendant remains convicted.

(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case,

the judicial officer shall enter such orders as are consistent with § 5-2-305.”

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Malone
JDF/CDS - 031420031603
CDS383

Secretary