



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB 55
Sponsored by Senator J. Woods
and Representative C. Fite**

Subtitle CONCERNING WHAT CONSTITUTES A SEX OFFENSE IN THE SEX OFFENDER REGISTRATION ACT OF 1997.

Impact Summary¹ Minimal, affecting fewer than ten offenders per year.

Change from current law² Amends Arkansas Code § 12-12-903(12)(A)(i), concerning the definition of “sex offenses” by adding new subdivisions (cc) Trafficking of persons, § 5-18-103(a)(4), as it pertains to a commercial sexual activity, a Class A felony or a Class Y felony if the victim is a minor, and (dd) Patronizing a victim of human trafficking, § 5-18-104, a Class B felony or a Class A felony if the victim is a minor. (See attached for these code provisions.)

Impact Information

The Administrative Office of the Courts reports that there has been one (1) case of Trafficking of persons, § 5-18-103, Class A felony and one (1) case of Attempt to commit trafficking of persons, Class B felony, which resulted in convictions since 8/16/2013, the effective date of this offense. Both of these offenders are currently serving a term of incarceration in the Arkansas Department of Correction. Please note that there are multiple courses of conduct for which an offender may be charged with Trafficking of persons. Data received does not identify which conduct (i.e. specific subsection) these offenders were convicted of. There were no convictions reported for Patronizing a victim of human trafficking, § 5-18-104.

It also should be noted that, under current law, the sentencing court has the discretion to require registration of an offender shown to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in § 12-12-903(12)(A)(i).

¹ This impact assessment was prepared (2/9/2015, 7:52 a.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

This proposed bill would add to the pool of offenders who could be charged with an offense related to the offender's status as a sex offender. Below are the current offenses for which an offender may be charged.

- 5-14-128 Registered sex offender residing within 2000 feet of certain facilities (school, public park, youth center, day care),
- 5-14-129 Registered sex offender working with children,
- 5-14-130 Registered sex offender providing incorrect address on identification card or driver's license,
- 5-14-131 Registered sex offender living near victim or having direct contact with the victim,
- 5-14-132 Registered sex offender prohibited from entering school campus,
- 5-14-133 Registered sex offender prohibited from entering a water park owned or operated by local government,
- 5-14-134 Registered sex offender prohibited from entering swimming area or children's playground within an Arkansas State Park,
- 12-12-904 Sex offender failing to register, filing false paperwork or documentation,
- 12-12-904 Sex offender failure or refusal to provide information,
- 12-12-906 Sex offender failing to register name change,
- 12-12-923 Sex offender not reporting for electronic monitor,
- 12-12-923 Altering, tampering, damaging or destroying electronic equipment worn by sex offender, or
- 12-12-923 Sex offender filing false certificate of indigency.

The Department of Correction reports there are 640 inmates currently serving a term of incarceration for these offenses relating to the inmate's status as a registered sex offender.

The Arkansas Crime Information Center reports that as of 1/6/2015, there were 14,253 registered sex offenders. This number includes 1,212 Level I, 5,385 Level II, 4,690 Level III, and 362 Level IV offenders. There were also 2,604 registered sex offenders who had not completed the assessment process.

A.C.A §12-12-903(12)

(12) (A) “Sex offense” includes, but is not limited to:

- (i) The following offenses
 - (a) Rape, § 5-14-103;
 - (b) Sexual indecency with a child, § 5-14-110;
 - (c) Sexual assault in the first degree, § 5-14-124;
 - (d) Sexual assault in the second degree, § 5-14-125;
 - (e) Sexual assault in the third degree, § 5-14-126;
 - (f) Sexual assault in the fourth degree, § 5-14-127;
 - (g) Incest, § 5-26-202;
 - (h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
 - (i) Transportation of minors for prohibited sexual conduct, § 5-27-305;
 - (j) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
 - (k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
 - (l) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
 - (m) Promoting prostitution in the first degree, § 5-70-104;
 - (n) Stalking, § 5-71-229, when ordered by the sentencing court to register as a sex offender;
 - (o) Indecent exposure, § 5-14-112, if a felony level offense;
 - (p) Exposing another person to human immunodeficiency virus, § 5-14-123, when ordered by the sentencing court to register as a sex offender;
 - (q) Kidnapping pursuant to § 5-11-102(a), when the victim is a minor and the offender is not the parent of the victim;
 - (r) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;
 - (s) Permitting abuse of a minor, § 5-27-221;
 - (t) Computer child pornography, § 5-27-603;
 - (u) Computer exploitation of a child, § 5-27-605;
 - (v) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;
 - (w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;
 - (x) Internet stalking of a child, § 5-27-306;
 - (y) Crime of video voyeurism, § 5-16-101, if a felony level offense;
 - (z) Voyeurism, § 5-16-102, if a felony level offense;
 - (aa) Any felony-homicide offense under § 5-10-101, § 5-10-102, or § 5-10-104 if the underlying felony is an offense listed in this subdivision (12)(A)(i); and
 - (bb) Sexually grooming a child, § 5-27-307;
- (ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (12)(A)(i) of this section;

- (iii) An adjudication of guilt for an offense of law of another state:
 - (a) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or
 - (b) When that adjudication of guilt requires registration under another state's sex offender registration laws;
 - (iv) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in subdivision (12)(A)
 - (v) (a) An adjudication of guilt for an offense in any federal court, the District of Columbia, a United States territory, a federally recognized Indian tribe, or for a military offense:
 - (1) Which is similar to any of the offenses enumerated in subdivision (12)(A)(i) of this section; or
 - (2) When the adjudication of guilt requires registration under sex offender registration laws of another state or jurisdiction
 - (b) If the conviction was for a violation of:
 - (1) 18 U.S.C. § 2252C;
 - (2) 18 U.S.C. § 2424; or
 - (3) 18 U.S.C. § 2425; or
 - (vi) An adjudication of guilt for an offense requiring registration under the laws of Canada, the United Kingdom, Australia, New Zealand, or any other foreign country where an independent judiciary enforces a right to a fair trial during the year in which the conviction occurred.
- (B) (i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (12)(A)(i) of this section.
- (ii) This authority applies to sex offenses enacted, renamed, or amended at a later date by the General Assembly unless the General Assembly expresses its intent to not consider the offense to be a true sex offense for the purposes of this subchapter;

A.C.A § 5-18-103. Trafficking of persons.

- (a) A person commits the offense of trafficking of persons if he or she knowingly:
 - (1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;
 - (2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;
 - (3) Subjects a person to involuntary servitude; or
 - (4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity.
- (b) It is not a defense to prosecution under subdivision (a)(4) of this section that the actor:
 - (1) Did not have knowledge of the victim's age; or
 - (2) Mistakenly believed a victim was not a minor
- (c) (1) Trafficking of persons is a Class A felony
- (2) Trafficking of persons is a Class Y felony if the victim was a minor at the time of the offense

- (d) In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars (\$250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

HISTORY: Acts 2013, No. 132, § 3; 2013, No. 133, § 3; 2013, No. 1257, § 4.

A.C.A § 5-18-104. Patronizing a victim of human trafficking.

- (a) A person commits the offense of patronizing a victim of human trafficking if he or she knowingly engages in commercial sexual activity with another person knowing that the other person is a victim of human trafficking.
- (b)
 - (1) Patronizing a victim of human trafficking is a Class B felony.
 - (2) Patronizing a victim of human trafficking is a Class A felony if the victim was a minor at the time of the offense.

HISTORY: Acts 2013, No. 132, § 3; 2013, No. 133, § 3.