



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1433
Sponsored by Representative Baltz**

Subtitle TO PROHIBIT A REGISTERED SEX OFFENDER FROM LIVING NEAR A FACILITY WHERE A PERSON WITH A MEDICALLY DIAGNOSED MENTAL DISABILITY OR PHYSICAL DISABILITY RESIDES.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 5-14-128, Registered offender living near certain places, to place an additional residency restriction on a Level 3 or Level 4 sex offender. Currently, a Level 3 or Level 4 sex offender is prohibited from residing within two thousand feet (2,000') a school, public park, youth center, or daycare. A Level 4 sex offender is also prohibited from residing within two thousand feet (2,000') of a church or other place of worship. Under the proposed bill, a Level 3 or 4 sex offender is prohibited from living within two thousand feet (2,000') of the property on which a facility where a person with a medically diagnosed mental disability or physical disability resides. Violation of A.C.A. § 5-14-125 is a Class D felony.

Under the proposed bill, it is not a violation of this section if the property on which the sex offender resides is owned and occupied by the sex offender and was purchased prior to the date of the establishment of the facility where a person with a medically diagnosed mental disability or physical disability resides. However, this exclusion does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after the establishment of a facility where a person with a medically diagnosed mental disability or physical disability resides. It is also not a violation of this section if the sex offender resides on property he or she owns prior to the effective date of this act.

Impact Information

Arkansas Crime Information Center reports the following as of December 27, 2016: There are 5,111 Level 3 sex offenders on the Arkansas Sex Offender Registry. There are 404 Level 4 sex offenders on the Arkansas Sex Offender Registry. This would serve as the potential pool of offenders under the proposed bill.

The Arkansas Department of Correction (ADC) reports that as of February 3, 2017, there are 37 inmates serving a term of incarceration for violating the residency restrictions of the current version of A.C.A. § 5-14-128, Registered offender prohibited from living near certain places, Class D felony, as currently written. Of those 37 inmates, 21 are serving a sentence where A.C.A. § 5-14-128, Registered offender prohibited from living near certain places, Class D felony, as currently written, is their primary offense.

¹ This impact assessment was prepared (2/9/2017, 8:47 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 A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors

Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

The residency restrictions listed in this code provision have additional impacts on the correctional resources of the State. These restrictions prevent inmates who have reached their transfer eligibility date and have been approved for release by the Parole Board from actually being released. If an inmate is unable to parole out of the ADC due to these residency restrictions, the average daily cost of care per inmate for holding them beyond their transfer eligibility date is \$60.51 per day.

ADC reports that there are currently 105 Level 3 and Level 4 sex offenders who have been approved for parole but are still incarcerated because their parole plan has been denied due to the residency prohibitions listed in A.C.A. § 5-14-128. Using the average daily cost of care per inmate of \$60.51, it costs an additional \$6,353.55 per day to hold these inmates past their parole eligibility date.

Based solely upon admissions to ADC for a conviction of A.C.A. § 5-14-128, the impact of this proposed bill is projected to be minimal. However, when considering the totality of the impact of the residency restrictions of this provision, the impact on the correctional resources of the State cannot be determined.

A.C.A. § 5-14-128. Registered offender living near school, public park, youth center, daycare, or church or other place of worship prohibited.

(a) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a:

(1) Level 3 or Level 4 offender may not knowingly reside within two thousand feet (2,000') of the property on which a public or private elementary or secondary school, public park, youth center, or daycare facility is located; or

(2) Level 4 offender may not knowingly reside within two thousand feet (2,000') of a church or other place of worship.

(b) (1) It is not a violation of this section if the property on which the sex offender resides is owned and occupied by the sex offender and was purchased prior to the date on which the public or private elementary or secondary school, public park, youth center, daycare facility, or church or other place of worship was established.

(2) The exclusion in subdivision (b)(1) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after the public or private elementary or secondary school, public park, youth center, daycare facility, or church or other place of worship is established.

(c) (1) (A) With respect to a public or private elementary or secondary school or a daycare facility, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 16, 2003.

(B) With respect to a public park or youth center, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 31, 2007.

(2) (A) The exclusion in subdivision (c)(1)(A) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after July 16, 2003.

(B) The exclusion in subdivision (c)(1)(B) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense on or after July 31, 2007.

(3) With respect to a church or other place of worship, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 22, 2015.

(d) A violation of this section is a Class D felony.

(e) (1) A person who is charged with violating this section shall be ordered as a condition of his or her release from custody not to return to the location where he or she was residing that was located within two thousand feet (2,000') of a public or private elementary or secondary school, public park, youth center, daycare facility, or church or other place of worship until the charge is adjudicated.

(2) The court having jurisdiction over the charge may order that the defendant be allowed to return to his or her residence before the adjudication of the charge if good cause is shown.

(f) As used in this section:

(1) "Church or other place of worship" means a physical location that has a primary purpose of facilitating the meeting of persons in order to practice a religion;

(2) "Public park" means any property owned or maintained by this state or a county, city, or town in this state for the recreational use of the public; and

(3) "Youth center" means any building, structure, or facility owned or operated by a not-for-profit organization or by this state or a county, city, or town in this state for use by minors to promote the health, safety, or general welfare of the minors.

HISTORY: Acts 2003, No. 330, § 3; 2007, No. 818, § 1; 2009, No. 1406, § 1; 2015, No. 376, § 1.