

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

*As Engrossed: S3/10/03 S3/21/03*

# A Bill

SENATE BILL 416

5 By: Senators Gullett, Salmon, Whitaker, Luker, *Capps, Glover, Holt, G. Jeffress, Trusty*  
6  
7

## For An Act To Be Entitled

9 AN ACT CONCERNING COMPUTER CRIMES; AND FOR OTHER  
10 PURPOSES.

### Subtitle

11 AN ACT CONCERNING COMPUTER CRIMES.  
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
17

18 SECTION 1. Arkansas Code § 5-27-303 is amended to read as follows:

19 5-27-303. Engaging children in sexually explicit conduct for use in  
20 visual or print medium.

21 (a) Any person who employs, uses, persuades, induces, entices, or  
22 coerces any child to engage in, or who has a child assist any other person to  
23 engage in, any sexually explicit conduct for the purpose of producing any  
24 visual or print medium depicting such conduct shall be guilty of a Class ~~C~~ B  
25 felony for the first offense and a Class ~~B~~ A felony for subsequent offenses.

26 (b) Any parent, legal guardian, or person having custody or control of  
27 a child who knowingly permits such child to engage in, or to assist any other  
28 person to engage in sexually explicit conduct for the purpose of producing  
29 any visual or print medium depicting such conduct shall be guilty of a Class  
30 ~~C~~ B felony for the first offense and a Class ~~B~~ A felony for subsequent  
31 offenses.  
32

33 SECTION 2. Arkansas Code § 5-27-601, concerning definitions for  
34 computer crimes against minors, is amended by adding additional subdivisions  
35 to read as follows:

36 (13) "Electronic mail" means an electronic message, file, data,



1 or other information that is transmitted:

2 (A) Between two (2) or more computers, computer networks,  
3 or electronic terminals; or

4 (B) Within or between computer networks;

5 (14) "Electronic mail service provider" means a person who:

6 (A) Is an intermediary in the transmission of electronic  
7 mail from the sender to the recipient; or

8 (B) Provides to end users of electronic mail service the  
9 ability to send and receive electronic mail; and

10 (15) "Interactive computer service" means an information  
11 service, system, or access software provider that provides or enables  
12 computer access by multiple users to a computer server, including  
13 specifically a service or system that provides access to the Internet and  
14 also the systems operated or services offered by libraries or educational  
15 institutions.

16  
17 SECTION 3. Arkansas Code § 5-27-602(a), concerning distributing,  
18 possessing, or viewing matter depicting sexually explicit conduct involving a  
19 child, is amended to read as follows:

20 (a) A person commits distributing, possessing, or viewing of matter  
21 depicting sexually explicit conduct involving a child if the person:

22 (1) Knowingly receives for the purpose of selling or knowingly  
23 sells, procures, manufactures, gives, provides, lends, trades, mails,  
24 delivers, transfers, publishes, distributes, circulates, disseminates,  
25 presents, exhibits, advertises, offers, or agrees to offer, through any  
26 means, including the Internet, any photograph, film, videotape, computer  
27 program or file, computer-generated image, video game, or any other  
28 reproduction or reconstruction which depicts a child or incorporates the  
29 image of a child engaging in sexually explicit conduct; or

30 (2) Knowingly possesses or views through any means, including on  
31 the Internet, any photograph, film, videotape, computer program or file,  
32 computer-generated image, video game, or any other reproduction, which  
33 depicts a child or incorporates the image of a child engaging in sexually  
34 explicit conduct.

35  
36 SECTION 4. Arkansas Code § 5-27-605 is amended to read as follows:

1 5-27-605. Computer exploitation of a child.

2 (a)(1) A person commits computer exploitation of a child in the first  
3 degree if the person causes or permits a child to engage in sexually explicit  
4 conduct if the person knows, has reason to know, or intends that the  
5 prohibited conduct may be photographed, filmed, reproduced, or reconstructed  
6 in any manner, including on the Internet, or may be part of an exhibition or  
7 performance.

8 (2)(A) Computer exploitation of a child in the first degree is a  
9 Class ~~C~~ B felony for the first offense.

10 (B) Computer exploitation of a child in the first degree  
11 is a Class ~~B~~ A felony for the second and subsequent offenses.

12 ~~(3) Computer exploitation of a child in the first degree shall~~  
13 ~~be a Class B felony if the person is the parent, guardian, or other person~~  
14 ~~legally charged with the care or custody of the child.~~

15 (b)(1) A person commits computer exploitation of a child in the second  
16 degree, if the person photographs or films a child engaged in sexually  
17 explicit conduct or uses any device, including a computer, to reproduce or  
18 reconstruct the image of a child engaged in sexually explicit conduct.

19 (2) Computer exploitation of a child in the second degree is a  
20 Class ~~D~~ C felony.

21  
22 *SECTION 5. Arkansas Code Title 5, Chapter 27, Subchapter 6 is amended*  
23 *by adding an additional section to read as follows:*

24 5-27-608. Applicability of this subchapter to interactive computer  
25 service and electronic mail service providers.

26 An interactive computer service or electronic mail service provider  
27 does not violate this subchapter when the interactive computer service or  
28 electronic mail service provider is an intermediary between the sender and  
29 the recipient in the transmission of an electronic mail that violates this  
30 subchapter.

31  
32 *SECTION 6. Arkansas Code Title 5, Chapter 41, Subchapter 1 is amended*  
33 *by adding an additional section to read as follows:*

34 5-41-109. Disclosure of personal information.

35 An Internet service provider shall disclose personally identifiable  
36 information concerning a consumer pursuant to a subpoena, warrant, or court

1 order issued under authority of a law of this state, another state, or the  
2 United States government.

3  
4       SECTION 7. Arkansas Code § 5-60-120, concerning interception and  
5 recording, is amended to add additional subsections to read as follows:

6       (f) Consistent with the provisions of 18 U.S.C. § 2703, as it existed  
7 on January 1, 2003, the issuance of a court order for disclosure of customer  
8 communications or records to a governmental entity requiring the information  
9 as part of an ongoing criminal investigation is not prohibited by the laws of  
10 this state.

11       (g) Consistent with the provisions of 18 U.S.C. §§ 3122-3127, as it  
12 existed on January 1, 2003, the issuance of a court order authorizing or  
13 approving the installation and use of a pen register or a trap-and-trace  
14 device as part of an ongoing criminal investigation is not prohibited by the  
15 laws of this state.

16  
17       SECTION 8. Arkansas Code § 5-1-109(h), concerning statutes of  
18 limitations, is amended to add additional subdivisions as follows:

19       (15) Computer child pornography, § 5-27-603; and

20       (16) Computer exploitation of a child in the first degree, § 5-  
21 27-605.

22  
23       SECTION 9. Arkansas Code § 6-17-410(c), concerning teacher licensure,  
24 is amended to add additional subdivisions to read as follows:

25       (30) Computer child pornography, § 5-27-603; and

26       (31) Computer exploitation of a child in the first degree, § 5-  
27 27-605.

28  
29       SECTION 10. Arkansas Code § 6-17-414(b)(1), concerning criminal  
30 records checks as a condition for initial employment of noncertified  
31 personnel, is amended to add additional subdivisions as follows:

32       (DD) Computer child pornography, § 5-27-603; and

33       (EE) Computer exploitation of a child in the first degree,  
34 § 5-27-605.

35  
36       SECTION 11. Arkansas Code § 9-28-409(e)(1), concerning criminal record

1 and child maltreatment checks, is amended to add additional subdivisions as  
2 follows:

3 (BB) Computer child pornography as prohibited in § 5-27-  
4 603; and

5 (CC) Computer exploitation of a child in the first degree  
6 as prohibited in § 5-27-605.

7  
8 *SECTION 12.* Arkansas Code § 12-12-1103(10), concerning  
9 deoxyribonucleic acid (DNA) detection of sexual and violent offenders, is  
10 amended to add additional subdivisions as follows:

11 (xviii) Computer child pornography – § 5-27-603; and  
12 (xix) Computer exploitation of a child in the first  
13 degree – § 5-27-605.

14  
15 *SECTION 13.* Arkansas Code § 16-90-1101(6), concerning the rights of  
16 crime victims, is amended to add additional subdivisions as follows:

17 (U) Computer child pornography, § 5-27-603; and  
18 (V) Computer exploitation of a child in the first degree,  
19 § 5-27-605.

20  
21 *SECTION 14.* Arkansas Code § 17-27-313(f), concerning criminal  
22 background checks for counselors, is amended to add additional subdivisions  
23 as follows:

24 (33) Computer child pornography, as prohibited in § 5-27-603;  
25 and

26 (34) Computer exploitation of a child in the first degree, as  
27 prohibited in § 5-27-605.

28  
29 *SECTION 15.* Arkansas Code § 17-87-312(f), concerning criminal  
30 background checks for nursing licenses, is amended to add additional  
31 subdivisions as follows:

32 (33) Computer child pornography, as prohibited in § 5-27-603;  
33 and

34 (34) Computer exploitation of a child in the first degree, as  
35 prohibited in § 5-27-605.

36

1           SECTION 16. Arkansas Code § 17-97-312(f), concerning criminal  
2 background checks for licensed psychologists, is amended to add additional  
3 subdivisions as follows:

- 4           (33) Computer child pornography, as prohibited in § 5-27-603;  
5 and  
6           (34) Computer exploitation of a child in the first degree, as  
7 prohibited in § 5-27-605.

8  
9           SECTION 17. Arkansas Code § 17-103-307(f), concerning criminal  
10 background checks for licensed social workers, is amended to add additional  
11 subdivisions as follows:

- 12           (33) Computer child pornography, as prohibited in § 5-27-603;and  
13           (34) Computer exploitation of a child in the first degree, as  
14 prohibited in § 5-27-605.

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17           SECTION 18. Arkansas Code § 20-13-1106(b), concerning criminal records  
18 checks for emergency medical technicians, is amended to add additional  
19 subdivisions as follows:

- 20           (36) Computer child pornography as prohibited in § 5-27-603; and  
21           (37) Computer exploitation of a child in the first degree as  
22 prohibited in § 5-27-605.

23  
24           SECTION 19. Arkansas Code § 20-33-205(b), concerning criminal records  
25 checks for persons providing care for the elderly, is amended to add  
26 additional subdivisions as follows:

- 27           (36) Computer child pornography, as prohibited in § 5-27-603;  
28 and  
29           (37) Computer exploitation of a child in the first degree, as  
30 prohibited in § 5-27-605.

31  
32           SECTION 20. Arkansas Code § 20-48-804(b), concerning criminal records  
33 checks for employees of providers of care to disabled adults, is amended to  
34 add additional subdivisions as follows:

- 35           (36) Computer child pornography, as prohibited in § 5-27-603;  
36 and

1           (37) Computer exploitation of a child in the first degree, as  
2 prohibited in § 5-27-605.

3  
4           SECTION 21. Arkansas Code § 20-78-604(a), concerning qualifications  
5 for child care ownership, operation, or employment, is amended to add  
6 additional subdivisions as follows:

7           (31) Computer child pornography as prohibited in § 5-27-603; and  
8           (32) Computer exploitation of a child in the first degree as  
9 prohibited in § 5-27-605.

10  
11           SECTION 22. Arkansas Code § 21-15-102(f), concerning positions  
12 involving direct contact with children and with mentally ill and  
13 developmentally disabled persons, is amended to add additional subdivisions  
14 as follows:

15           (33) Computer child pornography, as prohibited in § 5-27-603;  
16 and

17           (34) Computer exploitation of a child in the first degree, as  
18 prohibited in § 5-27-605.

19  
20           SECTION 23. Arkansas Code § 21-15-103(g), concerning the discharge of  
21 certain state employees, is amended to add additional subdivisions as  
22 follows:

23           (33) Computer child pornography, as prohibited in § 5-27-603;  
24 and

25           (34) Computer exploitation of a child in the first degree, as  
26 prohibited in § 5-27-605.

27  
28           SECTION 24. Arkansas Code § 21-15-104(c), concerning certain  
29 background check offenses which may not be waived, is amended to add  
30 additional subdivisions as follows:

31           (12) Computer child pornography, as prohibited in § 5-27-603;  
32 and

33           (13) Computer exploitation of a child in the first degree, as  
34 prohibited in § 5-27-605.

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36           SECTION 25. Arkansas Code § 5-36-303 is amended to read as follows:





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