

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: S3/19/03*

# A Bill

SENATE BILL 863

5 By: Senator Malone  
6  
7

## For An Act To Be Entitled

8  
9 *AN ACT CONCERNING INCEST, SEXUAL ASSAULT IN THE*  
10 *FIRST DEGREE, AND RAPE; AND FOR OTHER PURPOSES.*  
11

### Subtitle

12  
13 *AN ACT CONCERNING INCEST, SEXUAL ASSAULT*  
14 *IN THE FIRST DEGREE, AND RAPE.*  
15  
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 *SECTION 1. Arkansas Code § 5-26-202 is amended to read as follows:*  
20 *5-26-202. Incest.*

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

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

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

32 *(c) Incest is a Class C felony; ~~however, incest is a Class A felony if~~*  
33 *~~the victim is under sixteen (16) years of age and the perpetrator is over~~*  
34 *~~twenty one (21) years of age at the time of the offense.~~*  
35

36 *SECTION 2. Arkansas Code § 5-14-124 is amended to read as follows:*



1           5-14-124. Sexual assault in the first degree.

2           (a) A person commits sexual assault in the first degree if the person  
3 engages in sexual intercourse or deviate sexual activity with another person,  
4 not the person's spouse, who is less than eighteen (18) years of age and the  
5 ~~person~~ actor:

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

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

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

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

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

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

24  
25           SECTION 3. Arkansas Code § 5-14-103 is amended to read as follows:

26           5-14-103. Rape.

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

29                   (A) By forcible compulsion; or

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

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

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

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

3 (i) Is the victim's guardian;

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

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

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

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

12 ~~(2)(3)~~ Rape is a Class Y felony.

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

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

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

17 (2) If a judicial officer has reason to believe that mental  
18 disease or defect of the defendant will or has become an issue in the case,  
19 the judicial officer shall enter such orders as are consistent with § 5-2-  
20 305.

21 /s/ Malone

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