

1 State of Arkansas  
2 94th General Assembly  
3 Regular Session, 2023  
4

# A Bill

SENATE BILL 552

5 By: Senator Hester  
6 By: Representative Gonzales  
7

## For An Act To Be Entitled

9 AN ACT TO CREATE THE OFFENSE OF CAPITAL RAPE; AND FOR  
10 OTHER PURPOSES.  
11

## Subtitle

12 TO CREATE THE OFFENSE OF CAPITAL RAPE.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code Title 5, Chapter 14, Subchapter 1, is amended  
20 to add an additional section to read as follows:

21 5-14-114. Capital rape.

22 (a) A person commits capital rape if:

23 (1) By forcible compulsion, he or she engages in sexual  
24 intercourse or deviate sexual activity with another person who is younger  
25 than seventeen (17) years of age and causes or threatens to cause serious  
26 physical injury to the other person;

27 (2) He or she engages in sexual intercourse or deviate sexual  
28 activity with another person who is younger than fourteen (14) years of age  
29 and causes or threatens to cause serious physical injury to the other person;

30 (3) Acting alone or with one (1) or more other persons:

31 (A) The person commits or attempts to commit:

32 (i) Terrorism, § 5-54-205;

33 (ii) Kidnapping, § 5-11-102;

34 (iii) Vehicular piracy, § 5-11-105;

35 (iv) Robbery, § 5-12-102;

36 (v) Aggravated robbery, § 5-12-103;



1                   (vi) Residential burglary, § 5-39-201(a);  
 2                   (vii) Commercial burglary, § 5-39-201(b);  
 3                   (viii) Aggravated residential burglary, § 5-39-204;  
 4                   (ix) A felony violation of the Uniform Controlled  
 5 Substances Act, §§ 5-64-101 – 5-64-508, involving an actual delivery of a  
 6 controlled substance;

7                   (x) First degree escape, § 5-54-110;  
 8                   (xi) Trafficking of persons, § 5-18-103;  
 9                   (xii) Engaging children in sexually explicit conduct  
 10 for use in visual or print medium, § 5-27-303; or  
 11                   (xiii) Transportation of minors for prohibited  
 12 sexual conduct, § 5-27-305; and

13                   (B) During the course of or in furtherance of the offense  
 14 under subdivision (a)(3)(A) of this section, the person or an accomplice  
 15 engages in sexual intercourse or deviate sexual activity with another person  
 16 who is younger than fourteen (14) years of age;

17                   (4) The person enters into an agreement in which, in return for  
 18 anything of value, he or she engages in sexual intercourse or deviate sexual  
 19 activity with another person who is younger than fourteen (14) years of age;

20                   (5) While using or threatening to use a deadly weapon, he or she  
 21 engages in sexual intercourse or deviate sexual activity with another person  
 22 who is younger than fourteen (14) years of age;

23                   (6) He or she engages in sexual intercourse or deviate sexual  
 24 activity with another person who is younger than fourteen (14) years of age  
 25 after having been previously convicted of rape under § 5-14-103(a)(3) or  
 26 capital rape under this section; or

27                   (7) He or she commits rape under § 5-10-103 or capital rape  
 28 under subdivisions (a)(1)-(5) of this section after having been previously  
 29 convicted of rape under § 5-14-103 or capital rape under this section.

30                   (b)(1) Capital rape is punishable as follows:

31                   (A) If the defendant was eighteen (18) years of age or  
 32 older at the time he or she committed the offense:

33                   (i) Death; or  
 34                   (ii) Life imprisonment without parole under §§ 5-4-  
 35 601 – 5-4-605, 5-4-607, and 5-4-608; or

36                   (B) If the defendant was younger than eighteen (18) years

1 of age at the time he or she committed the offense, life imprisonment with  
2 the possibility of parole after serving a minimum of thirty (30) years'  
3 imprisonment.

4 (2) For any purpose other than disposition under §§ 5-4-101 – 5-  
5 4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-  
6 4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-  
7 314, capital rape is a Class Y felony.

8 (3)(A) If the sentence prescribed in subdivision (b)(1)(A)(i) of  
9 this section for capital rape is held unconstitutional, the sentence for  
10 capital rape shall be equal to the sentence prescribed in subdivision  
11 (b)(1)(A)(ii) of this section.

12 (B) If subdivisions (b)(1)(A)(i) and (ii) of this section  
13 are held to be unconstitutional, capital rape shall be a Class Y felony with  
14 a minimum term of imprisonment of twenty-five (25) years.

15 (c) It is no defense to a prosecution for capital rape under  
16 subdivisions (a)(2)-(a)(6) of this section that the victim consented to the  
17 conduct.

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

19 (A) A defendant pleads guilty or nolo contendere to  
20 capital rape; or

21 (B) All of the defendant's appeals have been exhausted and  
22 the defendant remains convicted of capital rape.

23 (2) If a judicial officer has reason to believe that mental  
24 disease or defect of the defendant will or has become an issue in the case,  
25 the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-  
26 328, or both.

27 (e) A person convicted of capital rape is subject to § 9-10-121.

28  
29 SECTION 2. Arkansas Code Title 16, Chapter 93, Subchapter 6, is  
30 amended to add an additional section to read as follows:

31 16-93-623. Parole eligibility – Capital rape.

32 (a) Unless the person was a minor at the time of the offense, a person  
33 sentenced for capital rape, § 5-14-114, on or after the effective date of  
34 this act is not eligible for parole.

35 (b)(1) If the person who committed capital rape, § 5-14-114, was a  
36 minor at the time of the offense, the person is eligible for release on

1 parole no later than after thirty (30) years of incarceration, including any  
2 applicable sentencing enhancements, and including an instance in which  
3 multiple sentences are to be served consecutively or concurrently, unless by  
4 law the minor is eligible for earlier parole eligibility.

5 (2) Credit for meritorious good time shall not be applied to  
6 calculations of time served under this subsection for minors convicted and  
7 sentenced for capital rape, § 5-14-114.

8 (3) The calculation of the time periods under this subsection  
9 shall include any applicable sentence enhancements to which the minor was  
10 sentenced that accompany the sentence for capital rape, § 5-14-114.

11 (c)(1) The Parole Board shall ensure that a hearing to consider the  
12 parole eligibility of a person who was a minor at the time he or she  
13 committed capital rape, § 5-14-114, takes into account how a minor offender  
14 is different from an adult offender and provides a person who was a minor at  
15 the time he or she committed capital rape, § 5-14-114, with a meaningful  
16 opportunity to be released on parole based on demonstrated maturity and  
17 rehabilitation.

18 (2) During a parole eligibility hearing involving a person who  
19 was a minor at the time he or she committed capital rape, § 5-14-114, the  
20 board shall take into consideration in addition to other factors required by  
21 law to be considered by the board:

22 (A) The diminished culpability of minors as compared to  
23 that of adults;

24 (B) The hallmark features of youth;

25 (C) Subsequent growth and increased maturity of the person  
26 during incarceration;

27 (D) Age of the person at the time of the capital rape, §  
28 5-14-114;

29 (E) Immaturity of the person at the time of the capital  
30 rape, § 5-14-114;

31 (F) The extent of the person's role in the capital rape, §  
32 5-14-114, and whether and to what extent an adult was involved in the capital  
33 rape, § 5-14-114;

34 (G) The person's family and community circumstances at the  
35 time of the capital rape, § 5-14-114, including any history of abuse, trauma,  
36 and involvement in the child welfare system;

1                   (H) The person’s participation in available rehabilitative  
2 and educational programs while in prison, if those programs have been made  
3 available, or use of self-study for self-improvement;

4                   (I) The results of comprehensive mental health evaluations  
5 conducted by an adolescent mental health professional licensed in the state  
6 at the time of sentencing and at the time the person becomes eligible for  
7 parole under this section; and

8                   (J) Other factors the board deems relevant.

9                   (3) A person eligible for parole under this section may have an  
10 attorney present to represent him or her at the parole eligibility hearing.

11                   (d)(1)(A) The board shall notify a victim of the capital rape, § 5-14-  
12 114, before the board reviews parole eligibility under this section for an  
13 inmate convicted of the capital rape, § 5-14-114, and provide information  
14 regarding victim input meetings, as well as state and national victim  
15 resource information.

16                   (B) If the victim is incapacitated or deceased, the notice  
17 under subdivision (d)(1)(A) of this section shall be given to the victim’s  
18 family.

19                   (C) If the victim is less than eighteen (18) years of age,  
20 the notice under subdivision (d)(1)(A) of this section shall be given to the  
21 victim’s parent or guardian.

22                   (2) Victim notification under this subsection shall include:

23                   (A) The location, date, and time of parole review; and

24                   (B) The name and phone number of the individual to contact  
25 for additional information.

26  
27                   SECTION 3. Arkansas Code § 5-1-109(a)(1), concerning the statute of  
28 limitations for offenses, is amended to read as follows:

29                   (a)(1) A prosecution for the following offenses may be commenced at  
30 any time:

31                   (A) Capital murder, § 5-10-101;

32                   (B) Murder in the first degree, § 5-10-102;

33                   (C) Murder in the second degree, § 5-10-103;

34                   (D) Rape, § 5-14-103, if the victim was a minor at the  
35 time of the offense;

36                   (E) Sexual indecency with a child, § 5-14-110;

- 1                    (F) Capital rape, § 5-14-114;
- 2                    ~~(F)(G)~~ Sexual assault in the first degree, § 5-14-124;
- 3                    ~~(G)(H)~~ Sexual assault in the second degree, § 5-14-125, if
- 4 the victim was a minor at the time of the offense;
- 5                    ~~(H)(I)~~ Incest, § 5-26-202, if the victim was a minor at
- 6 the time of the offense;
- 7                    ~~(I)(J)~~ Engaging children in sexually explicit conduct for
- 8 use in visual or print medium, § 5-27-303;
- 9                    ~~(J)(K)~~ Transportation of minors for prohibited sexual
- 10 conduct, § 5-27-305;
- 11                    ~~(K)(L)~~ Employing or consenting to the use of a child in a
- 12 sexual performance, § 5-27-402;
- 13                    ~~(L)(M)~~ Producing, directing, or promoting a sexual
- 14 performance by a child, § 5-27-403; and
- 15                    ~~(M)(N)~~ Computer exploitation of a child in the first
- 16 degree, § 5-27-605.

17

18                    SECTION 4. Arkansas Code § 5-1-110(d)(1), concerning prosecution of

19 conduct constituting more than one (1) offense, is amended to read as

20 follows:

21                    (d)(1) Notwithstanding any provision of law to the contrary, a

22 separate conviction and sentence are authorized for:

- 23                    (A) Capital murder, § 5-10-101, and any felony utilized as
- 24 an underlying felony for the capital murder;
- 25                    (B) Criminal attempt to commit capital murder, §§ 5-3-201
- 26 and 5-10-101, and any felony utilized as an underlying felony for the
- 27 attempted capital murder;
- 28                    (C) Murder in the first degree, § 5-10-102, and any felony
- 29 utilized as an underlying felony for the murder in the first degree;
- 30                    (D) Criminal attempt to commit murder in the first degree,
- 31 §§ 5-3-201 and 5-10-102, and any felony utilized as an underlying felony for
- 32 the attempted murder in the first degree; ~~and~~
- 33                    (E) Continuing criminal enterprise, § 5-64-405, and any
- 34 predicate felony utilized to prove the continuing criminal enterprise; and
- 35                    (F) Capital rape, § 5-14-114, and any felony utilized as
- 36 an underlying felony for the capital rape.

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SECTION 5. Arkansas Code § 5-3-203(2), concerning the classification of attempt offenses, is amended to read as follows:

(2) Class A felony if the offense attempted is treason, § 5-51-201, capital rape, § 5-14-114, or a Class Y felony other than capital murder, § 5-10-101;

SECTION 6. Arkansas Code § 5-3-301(b)(1), concerning the inchoate offense of solicitation, is amended to read as follows:

(1) Class A felony if the offense solicited is ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201, capital rape, § 5-14-114, or a Class Y felony;

SECTION 7. Arkansas Code § 5-3-404 is amended to read as follows:  
5-3-404. Classification.

Criminal conspiracy is a:

(1) Class A felony if an object of the conspiracy is commission of ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201, capital rape, § 5-14-114, or a Class Y felony;

(2) Class B felony if an object of the conspiracy is commission of a Class A felony;

(3) Class C felony if an object of the conspiracy is commission of a Class B felony;

(4) Class D felony if an object of the conspiracy is commission of a Class C felony;

(5) Class A misdemeanor if an object of the conspiracy is commission of a Class D felony or an unclassified felony;

(6) Class B misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor; or

(7) Class C misdemeanor if an object of the conspiracy is commission of a Class B misdemeanor.

SECTION 8. Arkansas Code § 5-4-104(b), concerning authorized sentences, is amended to read as follows:

(b) A defendant convicted of capital murder, § 5-10-101, capital rape, § 5-14-114, or treason, § 5-51-201, shall be sentenced to death or life

1 imprisonment without parole in accordance with §§ 5-4-601 – 5-4-605, 5-4-607,  
 2 and 5-4-608, except if the defendant was younger than eighteen (18) years of  
 3 age at the time he or she committed the capital murder, § 5-10-101, capital  
 4 rape, § 5-14-114, or treason, § 5-51-201, he or she shall be sentenced to  
 5 life imprisonment with the possibility of parole after serving a minimum of  
 6 thirty (30) years' imprisonment.

7  
 8 SECTION 9. Arkansas Code § 5-4-104(d) and (e), concerning authorized  
 9 sentences, are amended to read as follows:

10 (d) A defendant convicted of an offense other than a Class Y felony,  
 11 capital murder, § 5-10-101, capital rape, § 5-14-114, treason, § 5-51-201, or  
 12 murder in the second degree, § 5-10-103, may be sentenced to any one (1) or  
 13 more of the following, except as precluded by subsection (e) of this section:

- 14 (1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;
- 15 (2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-  
 16 306 – 16-93-314;
- 17 (3) Payment of a fine as authorized by §§ 5-4-201 and 5-4-202;
- 18 (4) Restitution as authorized by a provision of § 5-4-205; or
- 19 (5) Imprisonment and payment of a fine.

20 (e)(1)(A) The court shall not suspend imposition of sentence as to a  
 21 term of imprisonment nor place the defendant on probation for the following  
 22 offenses:

- 23 (i) Capital murder, § 5-10-101;
- 24 (ii) Capital rape, § 5-14-114;
- 25 (iii) Treason, § 5-51-201;
- 26 ~~(iii)~~(iv) A Class Y felony, except to the extent  
 27 suspension of an additional term of imprisonment is permitted in subsection  
 28 (c) of this section;
- 29 ~~(iv)~~(v) Driving or boating while intoxicated, § 5-  
 30 65-103;
- 31 ~~(v)~~(vi) Murder in the second degree, § 5-10-103,  
 32 except to the extent suspension of an additional term of imprisonment is  
 33 permitted in subsection (c) of this section; or
- 34 ~~(vi)~~(vii) Engaging in a continuing criminal  
 35 enterprise, § 5-64-405.

36 (B)(i) In any other case, the court may suspend imposition



1 of sentence or place the defendant on probation, in accordance with §§ 5-4-  
2 301 – 5-4-307 and 16-93-306 – 16-93-314, except as otherwise specifically  
3 prohibited by statute.

4 (ii) The court may not suspend execution of  
5 sentence.

6 (2) If the offense is punishable by fine and imprisonment, the  
7 court may sentence the defendant to pay a fine and suspend imposition of the  
8 sentence as to imprisonment or place the defendant on probation.

9 (3)(A) The court may sentence the defendant to a term of  
10 imprisonment and suspend imposition of sentence as to an additional term of  
11 imprisonment.

12 (B) However, the court shall not sentence a defendant to  
13 imprisonment and place him or her on probation, except as authorized by § 5-  
14 4-304.

15  
16 SECTION 10. Arkansas Code § 5-4-106(b), concerning an extended no  
17 contact order, is amended to read as follows:

18 (b) At the request of the prosecuting attorney, a court shall  
19 determine whether to issue an extended post-conviction no contact order to a  
20 person convicted of one (1) or more of the following offenses:

- 21 (1) Capital murder, § 5-10-101, or attempted capital murder;
- 22 (2) Murder in the first degree, § 5-10-102, or attempted murder  
23 in the first degree;
- 24 (3) Murder in the second degree, § 5-10-103, or attempted murder  
25 in the second degree;
- 26 (4) Kidnapping, § 5-11-102;
- 27 (5) Battery in the first degree, § 5-13-201;
- 28 (6) Battery in the second degree, § 5-13-202;
- 29 (7) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 30 (8) Sexual assault in the first degree, § 5-14-124;
- 31 (9) Domestic battering in the first degree, § 5-26-303;
- 32 (10) Domestic battering in the second degree, § 5-26-304; or
- 33 (11) Aggravated assault upon a law enforcement officer or an  
34 employee of a correctional facility, § 5-13-211, if a Class Y felony.

35  
36 SECTION 11. Arkansas Code § 5-4-301(a)(1), concerning offenses for

1 which suspension or probation is prohibited, is amended to read as follows:

2 (a)(1) A court shall not suspend imposition of sentence as to a term  
 3 of imprisonment or place a defendant on probation for the following offenses:

4 (A) Capital murder, § 5-10-101;

5 (B) Treason, § 5-51-201;

6 (C) Capital rape, § 5-14-114;

7 ~~(G)(D)~~ A Class Y felony, except to the extent suspension  
 8 of an additional term of imprisonment is permitted in § 5-4-104(c);

9 ~~(D)(E)~~ Driving or boating while intoxicated, § 5-65-103;

10 ~~(E)(F)~~ Murder in the second degree, § 5-10-103, except to  
 11 the extent suspension of an additional term of imprisonment is permitted in §  
 12 5-4-104(c); or

13 ~~(F)(G)~~ Engaging in a continuing criminal enterprise, § 5-  
 14 64-405.

15  
 16 SECTION 12. Arkansas Code § 5-4-501(c)(2), concerning habitual  
 17 offenders and what offenses are considered serious felonies involving  
 18 violence, is amended to read as follows:

19 (2) As used in this subsection, “serious felony involving  
 20 violence” means:

21 (A) Any of the following felonies:

22 (i) Murder in the first degree, § 5-10-102;

23 (ii) Murder in the second degree, § 5-10-103;

24 (iii) Kidnapping, § 5-11-102, involving an activity  
 25 making it a Class Y felony;

26 (iv) Aggravated robbery, § 5-12-103;

27 (v) Terroristic act, § 5-13-310, involving an  
 28 activity making it a Class Y felony;

29 (vi) Rape, § 5-14-103, or capital rape, § 5-14-114;

30 (vii) Sexual assault in the first degree, § 5-14-  
 31 124;

32 (viii) Causing a catastrophe, § 5-38-202(a);

33 (ix) Aggravated residential burglary, § 5-39-204; or

34 (x) Aggravated assault upon a law enforcement  
 35 officer or an employee of a correctional facility, § 5-13-211, if a Class Y  
 36 felony; or

1 (B) A conviction of a comparable serious felony involving  
2 violence from another jurisdiction.

3  
4 SECTION 13. Arkansas Code § 5-4-501(d)(2)(A), concerning habitual  
5 offenders and what rape offenses are considered felonies involving violence,  
6 is amended to read as follows:

7 (A) Any of the following felonies:

- 8 (i) Murder in the first degree, § 5-10-102;
- 9 (ii) Murder in the second degree, § 5-10-103;
- 10 (iii) Kidnapping, § 5-11-102;
- 11 (iv) Aggravated robbery, § 5-12-103;
- 12 (v) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 13 (vi) Battery in the first degree, § 5-13-201;
- 14 (vii) Terroristic act, § 5-13-310;
- 15 (viii) Sexual assault in the first degree, § 5-14-124;
- 16 (ix) Sexual assault in the second degree, § 5-14-125;
- 17 (x) Domestic battering in the first degree, § 5-26-303;
- 18 (xi) Residential burglary, § 5-39-201(a);
- 19 (xii) Aggravated residential burglary, § 5-39-204;
- 20 (xiii) Unlawful discharge of a firearm from a vehicle, §  
21 5-74-107;
- 22 (xiv) Criminal use of prohibited weapons, § 5-73-104,  
23 involving an activity making it a Class B felony;
- 24 (xv) A felony attempt, solicitation, or conspiracy to  
25 commit:
  - 26 (a) Capital murder, § 5-10-101;
  - 27 (b) Murder in the first degree, § 5-10-102;
  - 28 (c) Murder in the second degree, § 5-10-103;
  - 29 (d) Kidnapping, § 5-11-102;
  - 30 (e) Aggravated robbery, § 5-12-103;
  - 31 (f) Aggravated assault upon a law enforcement  
32 officer or an employee of a correctional facility, § 5-13-211, if a Class Y  
33 felony;
  - 34 (g) Rape, § 5-14-103, or capital rape, § 5-14-114;
  - 35 (h) Battery in the first degree, § 5-13-201;
  - 36 (i) Domestic battering in the first degree, § 5-26-

1 303;

2 (j) Residential burglary, § 5-39-201(a); or

3 (k) Aggravated residential burglary, § 5-39-204; or

4 (xvi) Aggravated assault upon a law enforcement officer or  
5 an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

6  
7 SECTION 14. Arkansas Code § 5-4-601, concerning the legislative intent  
8 of the trial and sentencing procedures for capital offenses, is amended to  
9 read as follows:

10 (a) In enacting this subchapter, it is the intent of the General  
11 Assembly to specify the procedures and standards pursuant to which a  
12 sentencing body shall conform in making a determination as to whether a  
13 sentence of death is to be imposed upon a conviction ~~of capital murder for~~  
14 capital murder, § 5-10-101, or capital rape, § 5-14-114.

15 (b) If the provisions of this subchapter respecting sentencing  
16 procedures are held invalid with regard to the imposition of a sentence of  
17 death or a sentence of death is declared to be invalid per se, it is the  
18 intent of the General Assembly that+

19 ~~(1) Capital murder is~~ capital murder, § 5-10-101, and capital  
20 rape, § 5-14-114, are punishable by life imprisonment without parole; ~~and~~

21 ~~(2) The procedures and findings required by §§ 5-4-602—5-4-~~  
22 ~~605, 5-4-607, and 5-4-608 are deemed repealed and of no effect.~~

23  
24 SECTION 15. Arkansas Code § 5-4-604 is amended to read as follows:  
25 5-4-604. Aggravating circumstances.

26 An aggravating circumstance is limited to the following:

27 (1) The capital ~~murder~~ offense was committed by a person  
28 imprisoned as a result of a felony conviction;

29 (2) The capital ~~murder~~ offense was committed by a person  
30 unlawfully at liberty after being sentenced to imprisonment as a result of a  
31 felony conviction;

32 (3) The person previously committed another felony, an element  
33 of which was the use or threat of violence to another person or the creation  
34 of a substantial risk of death or serious physical injury to another person;

35 (4) The person in the commission of the capital ~~murder~~ offense  
36 knowingly created a great risk of death to a person other than the victim or

1 caused the death of more than one (1) person in the same criminal episode;

2 (5) The capital ~~murder~~ offense was committed for the purpose of  
3 avoiding or preventing an arrest or effecting an escape from custody;

4 (6) The capital ~~murder~~ offense was committed for pecuniary gain;

5 (7) The capital ~~murder~~ offense was committed for the purpose of  
6 disrupting or hindering the lawful exercise of any government or political  
7 function;

8 (8)(A) The capital ~~murder~~ offense was committed in an especially  
9 cruel or depraved manner.

10 (B)(i) For purposes of subdivision (8)(A) of this section,  
11 a capital murder is committed in an especially cruel manner when, as part of  
12 a course of conduct intended to inflict mental anguish, serious physical  
13 abuse, or torture upon the victim prior to the victim's death, mental  
14 anguish, serious physical abuse, or torture is inflicted.

15 (ii)(a) "Mental anguish" means the victim's  
16 uncertainty as to his or her ultimate fate.

17 (b) "Serious physical abuse" means physical  
18 abuse that creates a substantial risk of death or that causes protracted  
19 impairment of health, or loss or protracted impairment of the function of any  
20 bodily member or organ.

21 (c) "Torture" means the infliction of extreme  
22 physical pain for a prolonged period of time prior to the victim's death.

23 (C) For purposes of subdivision (8)(A) of this section, a  
24 capital ~~murder~~ offense is committed in an especially depraved manner when the  
25 person relishes the ~~murder~~ offense, evidencing debasement or perversion, or  
26 shows an indifference to the suffering of the victim and evidences a sense of  
27 pleasure in committing the ~~murder~~ offense;

28 (9) The capital ~~murder~~ offense was committed by means of a  
29 destructive device, bomb, explosive, or similar device that the person  
30 planted, hid, or concealed in any place, area, dwelling, building, or  
31 structure, or mailed or delivered, or caused to be planted, hidden,  
32 concealed, mailed, or delivered, and the person knew that his or her act  
33 would create a great risk of death to human life; or

34 (10) The capital ~~murder~~ offense was committed against a person  
35 whom the defendant knew or reasonably should have known was especially  
36 vulnerable to the attack because:

1 (A) Of either a temporary or permanent severe physical or  
2 mental disability which would interfere with the victim's ability to flee or  
3 to defend himself or herself; or

4 (B) The person was twelve (12) years of age or younger.  
5

6 SECTION 16. Arkansas Code § 5-4-605 is amended to read as follows:

7 5-4-605. Mitigating circumstances.

8 A mitigating circumstance includes, ~~but is not limited to,~~ without  
9 limitation the following:

10 (1) The capital ~~murder~~ offense was committed while the defendant  
11 was under extreme mental or emotional disturbance;

12 (2) The capital ~~murder~~ offense was committed while the defendant  
13 was acting under an unusual pressure or influence or under the domination of  
14 another person;

15 (3) The capital ~~murder~~ offense was committed while the capacity  
16 of the defendant to appreciate the wrongfulness of his or her conduct or to  
17 conform his or her conduct to the requirements of law was impaired as a  
18 result of mental disease or defect, intoxication, or drug abuse;

19 (4) The youth of the defendant at the time of the commission of  
20 the capital ~~murder~~ offense;

21 (5) The capital ~~murder~~ offense was committed by another person  
22 and the defendant was an accomplice and his or her participation was  
23 relatively minor; or

24 (6) The defendant has no significant history of prior criminal  
25 activity.  
26

27 SECTION 17. Arkansas Code § 5-4-607 is amended to read as follows:

28 5-4-607. Application for executive clemency – Regulations.

29 (a) The pardon of a person convicted of capital murder, § 5-10-101,  
30 capital rape, § 5-14-114, or of a Class Y felony, Class A felony, or Class B  
31 felony, or the commutation of a sentence of a person convicted of capital  
32 murder, § 5-10-101, or capital rape, § 5-14-114, or of a Class Y felony,  
33 Class A felony, or Class B felony, may be granted only in the manner provided  
34 in this section.

35 (b)(1) A copy of the application for pardon or commutation shall be  
36 filed with:

- 1 (A) The Secretary of State;
- 2 (B) The Attorney General;
- 3 (C) The sheriff of the county where the offense was
- 4 committed;

5 (D) The prosecuting attorney of the judicial district  
 6 where the applicant was found guilty and sentenced, if still in office, and,  
 7 if not, the successor of that prosecuting attorney;

8 (E) The circuit judge presiding over the proceedings at  
 9 which the applicant was found guilty and sentenced, if still in office, and,  
 10 if not, the successor of that circuit judge; and

11 (F) The victim of the crime or the victim's next of kin,  
 12 if he or she files a request for notice with the prosecuting attorney.

13 (2)(A) The application shall set forth a ground upon which the  
 14 pardon or commutation is sought.

15 (B) If the application involves a conviction for capital  
 16 murder, § 5-10-101, or capital rape, § 5-14-114, a notice of the application  
 17 shall be published by two (2) insertions, separated by a minimum of seven (7)  
 18 days, in a newspaper of general circulation in the county or counties where  
 19 the offense or offenses of the applicant were committed.

20 (c) On granting an application for pardon or commutation, the Governor  
 21 shall:

22 (1) Include in his or her written order the reason for the  
 23 granting of the application; and

24 (2) File with the House of Representatives and the Senate a copy  
 25 of his or her written order which shall state the:

- 26 (A) Applicant's name;
- 27 (B) Offense of which the applicant was convicted and the
- 28 sentence imposed;
- 29 (C) Date of the judgment imposing the sentence; and
- 30 (D) Effective date of the pardon or commutation.

31 (d) A person sentenced to death or to life imprisonment without parole  
 32 is not eligible for parole and shall not be paroled.

33 (e) If the sentence of a person sentenced to death or life  
 34 imprisonment without parole is commuted by the Governor to a term of years,  
 35 the person shall not be paroled, nor shall the length of his or her  
 36 incarceration be reduced in any way to less than the full term of years

1 specified in the order of commutation or in any subsequent order of  
 2 commutation.

3 (f) A reprieve may be granted as presently provided by law.  
 4

5 SECTION 18. Arkansas Code § 5-4-608 is amended to read as follows:

6 5-4-608. Waiver of death penalty.

7 (a) If a defendant is charged with a capital ~~murder~~ offense, with the  
 8 permission of the court the prosecuting attorney may waive the death penalty.

9 (b) In a case described in subsection (a) of this section, if the  
 10 defendant pleads guilty to the capital ~~murder~~ offense or is found guilty of a  
 11 capital ~~murder~~ offense after trial to the court or to a jury, the trial court  
 12 shall sentence the defendant to life imprisonment without parole.  
 13

14 SECTION 19. Arkansas Code § 5-4-618 is amended to read as follows:

15 5-4-618. Defendants with intellectual disabilities.

16 (a)(1) As used in this section, “intellectual disabilities” means:

17 (A) Significantly below-average general intellectual  
 18 functioning accompanied by a significant deficit or impairment in adaptive  
 19 functioning manifest in the developmental period, but no later than age  
 20 eighteen (18) years of age; and

21 (B) A deficit in adaptive behavior.

22 (2) There is a rebuttable presumption of intellectual  
 23 disabilities when a defendant has an intelligence quotient of sixty-five (65)  
 24 or below.

25 (b) No defendant with intellectual disabilities at the time of  
 26 committing capital murder, § 5-10-101, or capital rape, § 5-14-114, shall be  
 27 sentenced to death.

28 (c) The defendant has the burden of proving intellectual disabilities  
 29 at the time of committing the offense by a preponderance of the evidence.

30 (d)(1) A defendant on trial for capital murder, § 5-10-101, or capital  
 31 rape, § 5-14-114, shall raise the special sentencing provision of  
 32 intellectual disabilities by motion prior to trial.

33 (2)(A) Prior to trial, the court shall determine if the  
 34 defendant has an intellectual disability.

35 (B)(i) If the court determines that the defendant does not  
 36 have an intellectual disability, the defendant may raise the question of an



1 intellectual disability to the jury for determination de novo during the  
 2 sentencing phase of the trial.

3 (ii) At the time the jury retires to decide  
 4 mitigating and aggravating circumstances, the jury shall be given a special  
 5 verdict form on an intellectual disability.

6 (iii) If the jury unanimously determines that the  
 7 defendant had an intellectual disability at the time of the commission of  
 8 capital murder, § 5-10-101, or capital rape, § 5-14-114, then the defendant  
 9 will automatically be sentenced to life imprisonment without possibility of  
 10 parole.

11 (C) If the court determines that the defendant has an  
 12 intellectual disability, then:

13 (i) The jury is not “death qualified”; and

14 (ii) The jury shall sentence the defendant to life  
 15 imprisonment without possibility of parole upon conviction.

16 (e) However, this section is not deemed to:

17 (1) Require unanimity for consideration of any mitigating  
 18 circumstance; or

19 (2) Supersede any suggested mitigating circumstance regarding  
 20 mental defect or disease currently found in § 5-4-605.

21

22 SECTION 20. Arkansas Code § 5-4-702(a), concerning a sentence  
 23 enhancement for offenses committed in the presence of a child, is amended to  
 24 read as follows:

25 (a) A person who commits any of the following offenses may be subject  
 26 to an enhanced sentence of an additional term of imprisonment of not less  
 27 than one (1) year and not greater than ten (10) years if the offense is  
 28 committed in the presence of a child:

29 (1) Capital murder, § 5-10-101;

30 (2) Murder in the first degree, § 5-10-102;

31 (3) Murder in the second degree, § 5-10-103;

32 (4) Aggravated robbery, § 5-12-103;

33 (5) A felony offense of assault or battery under § 5-13-201 et  
 34 seq.;

35 (6) Rape, § 5-14-103, or capital rape, § 5-14-114;

36 (7) Sexual assault in the second degree, § 5-14-125; or

1 (8) A felony offense of domestic battering or assault on a  
 2 family or household member under §§ 5-26-303 – 5-26-309.

3  
 4 SECTION 21. Arkansas Code § 5-10-101(a)(1)(A), concerning capital  
 5 murder committed while committing certain felony offenses, is amended to read  
 6 as follows:

- 7 (A) The person commits or attempts to commit:
- 8 (i) Terrorism, as defined in § 5-54-205;
  - 9 (ii) Rape, § 5-14-103, or capital rape, § 5-14-114;
  - 10 (iii) Kidnapping, § 5-11-102;
  - 11 (iv) Vehicular piracy, § 5-11-105;
  - 12 (v) Robbery, § 5-12-102;
  - 13 (vi) Aggravated robbery, § 5-12-103;
  - 14 (vii) Residential burglary, § 5-39-201(a);
  - 15 (viii) Commercial burglary, § 5-39-201(b);
  - 16 (ix) Aggravated residential burglary, § 5-39-204;
  - 17 (x) A felony violation of the Uniform Controlled  
 18 Substances Act, §§ 5-64-101 – 5-64-508, involving an actual delivery of a  
 19 controlled substance; or
  - 20 (xi) First degree escape, § 5-54-110; and

21  
 22 SECTION 22. Arkansas Code § 5-14-103 is amended to read as follows:  
 23 5-14-103. Rape.

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

- 26 (1) By forcible compulsion;
- 27 (2) Who is incapable of consent because he or she is:
  - 28 (A) Physically helpless;
  - 29 (B) Mentally defective; or
  - 30 (C) Mentally incapacitated;
- 31 (3)(A) Who is less than fourteen (14) years of age.
- 32 (B) It is an affirmative defense to a prosecution under  
 33 subdivision (a)(3)(A) of this section that the actor was not more than three  
 34 (3) years older than the victim; or
- 35 (4)(A) Who is a minor and the actor is the victim's:
  - 36 (i) Guardian;

1 (ii) Uncle, aunt, grandparent, step-grandparent, or  
2 grandparent by adoption;

3 (iii) Brother or sister of the whole or half blood  
4 or by adoption; or

5 (iv) Nephew, niece, or first cousin.

6 (B) It is an affirmative defense to a prosecution under  
7 subdivision (a)(4)(A) of this section that the actor was not more than three  
8 (3) years older than the victim.

9 (b) It is no defense to a prosecution under subdivision (a)(3) or  
10 subdivision (a)(4) of this section that the victim consented to the conduct.

11 (c)(1) Rape is a Class Y felony.

12 (2) Except as provided under § 5-4-104(c)(2), a person who  
13 pleads guilty or nolo contendere to or is found guilty of rape involving a  
14 victim who is less than fourteen (14) years of age under this section shall  
15 be sentenced to a minimum term of imprisonment of twenty-five (25) years.

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

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

18 (B) All of the defendant’s appeals have been exhausted and  
19 the defendant remains convicted.

20 (2) If a judicial officer has reason to believe that mental  
21 disease or defect of the defendant will or has become an issue in the case,  
22 the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-  
23 328, or both.

24 (e) A person convicted of rape is subject to § 9-10-121.

25 (f) The offense of rape under subdivision (a)(3) of this section is a  
26 lesser included offense to capital rape, § 5-14-114.

27  
28 SECTION 23. Arkansas Code § 5-54-105(b)(2), concerning the offense of  
29 hindering apprehension or prosecution, is amended to read as follows:

30 (2) Subdivision (b)(1)(B) of this section does not apply if the  
31 offense of the person assisted is:

32 (A) Capital murder, as prohibited in § 5-10-101;

33 (B) Murder in the first degree, as prohibited in § 5-10-  
34 102;

35 (C) Kidnapping, as prohibited in § 5-11-102; ~~or~~

36 (D) Rape, as prohibited in § 5-14-103; or

1                   (E) Capital rape, § 5-14-114.

2

3           SECTION 24. Arkansas Code § 5-73-202(1), concerning the definitions to  
4 be used under the Uniform Machine Gun Act, is amended to read as follows:

5                   (1) “Crime of violence” means any of the following crimes or an  
6 attempt to commit any of them:

- 7                   (A) Murder;
- 8                   (B) Manslaughter;
- 9                   (C) Kidnapping;
- 10                  (D) Rape;
- 11                  (E) Mayhem;
- 12                  (F) Assault to do great bodily harm;
- 13                  (G) Robbery;
- 14                  (H) Burglary;
- 15                  (I) Housebreaking;
- 16                  (J) Breaking and entering; ~~and~~
- 17                  (K) Larceny; and
- 18                  (L) Capital rape, § 5-14-114;

19

20           SECTION 25. Arkansas Code § 6-17-410(c)(8), concerning teacher  
21 licensure and which offenses are disqualifying for licensure if there is a  
22 true report in the Child Maltreatment Central Registry or who has been found  
23 guilty of the offense, is amended to read as follows:

24                   (8) Rape as prohibited in § 5-14-103 or capital rape as  
25 prohibited in § 5-14-114;

26

27           SECTION 26. Arkansas Code § 6-17-414(b)(8), concerning teacher  
28 licensure and which offenses are disqualifying for licensure if there is a  
29 true report in the Child Maltreatment Central Registry or who has been found  
30 guilty of the offense, is amended to read as follows:

31                   (8) Rape as prohibited in § 5-14-103 or capital rape as  
32 prohibited in § 5-14-114;

33

34           SECTION 27. Arkansas Code § 9-10-121(a), concerning termination of  
35 parental rights of putative fathers convicted of a rape, is amended to read  
36 as follows:

1 (a) All rights of a putative father to custody, visitation, or other  
 2 contact with a child conceived as a result of a rape shall be terminated  
 3 immediately upon conviction of the rape in which the child was conceived  
 4 under § 5-14-103 or § 5-14-114.

5  
 6 SECTION 28. Arkansas Code § 9-27-318(b)(1)(K), concerning the filing  
 7 of felony offenses committed by a juvenile into circuit court, is amended to  
 8 read as follows:

9 (K) A felony attempt, solicitation, or conspiracy to  
 10 commit any of the following offenses:

- 11 (i) Capital murder, § 5-10-101;
- 12 (ii) Murder in the first degree, § 5-10-102;
- 13 (iii) Murder in the second degree, § 5-10-103;
- 14 (iv) Kidnapping, § 5-11-102;
- 15 (v) Aggravated robbery, § 5-12-103;
- 16 (vi) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 17 (vii) Battery in the first degree, § 5-13-201;
- 18 (viii) First degree escape, § 5-54-110; and
- 19 (ix) Second degree escape, § 5-54-111;

20  
 21 SECTION 29. Arkansas Code § 9-27-318(c), concerning the filing of  
 22 felony offenses committed by a juvenile into circuit court, is amended to  
 23 read as follows:

24 (c) A prosecuting attorney may charge a juvenile in either the  
 25 juvenile or criminal division of circuit court when a case involves a  
 26 juvenile:

27 (1) At least sixteen (16) years old when he or she engages in  
 28 conduct that, if committed by an adult, would be any felony; or

29 (2) Fourteen (14) or fifteen (15) years old when he or she  
 30 engages in conduct that, if committed by an adult, would be:

- 31 (A) Capital murder, § 5-10-101;
- 32 (B) Murder in the first degree, § 5-10-102;
- 33 (C) Kidnapping, § 5-11-102;
- 34 (D) Aggravated robbery, § 5-12-103;
- 35 (E) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 36 (F) Battery in the first degree, § 5-13-201; or

1 (G) Terroristic act, § 5-13-310.

2

3 SECTION 30. Arkansas Code § 9-27-356(a), concerning juvenile sex  
4 offender assessment and registration, is amended to read as follows:

5 (a) If a juvenile is an adjudicated delinquent for any of the  
6 following offenses, the court shall order a sex offender screening and risk  
7 assessment:

- 8 (1) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 9 (2) Sexual assault in the first degree, § 5-14-124;
- 10 (3) Sexual assault in the second degree, § 5-14-125;
- 11 (4) Incest, § 5-26-202; or
- 12 (5) Engaging children in sexually explicit conduct for use in  
13 visual or print medium, § 5-27-303.

14

15 SECTION 31. Arkansas Code § 9-27-357(a), concerning delinquent persons  
16 who are required to submit a deoxyribonucleic acid sample, is amended to read  
17 as follows:

18 (a) A person who is adjudicated delinquent for the following offenses  
19 shall have a deoxyribonucleic acid sample drawn:

- 20 (1) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 21 (2) Sexual assault in the first degree, § 5-14-124;
- 22 (3) Sexual assault in the second degree, § 5-14-125;
- 23 (4) Incest, § 5-26-202;
- 24 (5) Capital murder, § 5-10-101;
- 25 (6) Murder in the first degree, § 5-10-102;
- 26 (7) Murder in the second degree, § 5-10-103;
- 27 (8) Kidnapping, § 5-11-102;
- 28 (9) Aggravated robbery, § 5-12-103;
- 29 (10) Terroristic act, § 5-13-310; and
- 30 (11) Aggravated assault upon a law enforcement officer or an  
31 employee of a correctional facility, § 5-13-211, if a Class Y felony.

32

33 SECTION 32. Arkansas Code § 9-28-409(e)(2), concerning disqualifying  
34 offenses for a person who undergoes a criminal record and background check  
35 under the Child Welfare Agency Licensing Act, is amended to read as follows:

- 36 (2) A person who is required to have a criminal records check

1 under subdivision (b)(1) or subdivision (c)(1) of this section shall be  
 2 absolutely and permanently prohibited from having direct and unsupervised  
 3 contact with a child in the care of a child welfare agency if that person has  
 4 pleaded guilty or nolo contendere to or been found guilty of any of the  
 5 following offenses by any court in the State of Arkansas, of a similar  
 6 offense in a court of another state, or of a similar offense by a federal  
 7 court, unless the conviction is vacated or reversed:

- 8 (A) Abuse of an endangered or impaired person, if felony,  
 9 § 5-28-103;
- 10 (B) Arson, § 5-38-301;
- 11 (C) Capital murder, § 5-10-101;
- 12 (D) Endangering the welfare of an incompetent person in  
 13 the first degree, § 5-27-201;
- 14 (E) Kidnapping, § 5-11-102;
- 15 (F) Murder in the first degree, § 5-10-102;
- 16 (G) Murder in the second degree, § 5-10-103;
- 17 (H) Rape, § 5-14-103, or capital rape, § 5-14-114;
- 18 (I) Sexual assault in the first degree, § 5-14-124;
- 19 (J) Sexual assault in the second degree, § 5-14-125;
- 20 (K) Aggravated assault upon a law enforcement officer or  
 21 an employee of a correctional facility, § 5-13-211, if a Class Y felony; and  
 22 (L) Trafficking of persons, § 5-18-103.

23  
 24 SECTION 33. Arkansas Code § 11-5-115(a)(1), concerning the offenses  
 25 that may be grounds for a civil action concerning workplace violence and  
 26 working conditions, is amended to read as follows:

27 (1) Suffered unlawful violence by an individual as defined by §  
 28 5-13-310, terroristic act; § 5-14-103, rape; § 5-14-114, capital rape; §§ 5-  
 29 13-201 – 5-13-203, battery; §§ 5-26-301 – 5-26-309, domestic battering and  
 30 assault on a family or household member; or a crime of violence as defined by  
 31 § 5-73-202(1);

32  
 33 SECTION 34. Arkansas Code § 12-12-104(f)(2)(A), concerning the offense  
 34 of rape and its inclusion in the definition of "sex offense", is amended to  
 35 read as follows:

- 36 (A) Rape, § 5-14-103, or capital rape, § 5-14-114;

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SECTION 35. Arkansas Code § 12-12-903(13)(A)(i)(a), concerning the offense of rape and its inclusion in the definition of "sex offense" for purposes of the requirement to retain physical evidence in certain prosecutions under the Sex Offender Registration Act of 1997, is amended to read as follows:

(a) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 36. Arkansas Code § 12-12-919(a), concerning lifetime registration for a sex offender, is amended to read as follows:

- (a) Lifetime registration is required for a sex offender who:
  - (1) Was found to have committed an aggravated sex offense;
  - (2) Was determined by the court to be or assessed as a Level 4 sexually dangerous person;
  - (3) Has pleaded guilty or nolo contendere to or been found guilty of a second or subsequent sex offense under a separate case number, not multiple counts on the same charge;
  - (4) Was convicted of rape by forcible compulsion, § 5-14-103(a)(1), capital rape, § 5-14-114, or other substantially similar offense in another jurisdiction; or
  - (5) Has pleaded guilty or nolo contendere to or been found guilty of failing to comply with registration and reporting requirements under § 12-12-904 three (3) or more times.

SECTION 37. Arkansas Code § 12-29-102(4), concerning offenses for which an inmate will be denied participation in a furlough program, is amended to read as follows:

(4) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 38. Arkansas Code § 12-30-404(a)(3), concerning the offenses for which an inmate will be denied participation in a work study release program, is amended to read as follows:

(3) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 39. Arkansas Code § 13-4-409(c)(1)(D), concerning which items



1 relating to criminal investigations should be retained by a sheriff’s office  
 2 for ninety-nine years, is amended to read as follows:

3 (D) Rape, § 5-14-103, and capital rape, § 5-14-114;  
 4

5 SECTION 40. Arkansas Code § 16-33-305 is amended to read as follows:

6 16-33-305. Challenge to trial jurors – Individual juror – Peremptory.

7 (a) The state shall be entitled to ten (10) peremptory challenges in  
 8 prosecutions for capital murder, § 5-10-101, or capital rape, § 5-14-114, to  
 9 six (6) peremptory challenges in prosecutions for all other felonies, and to  
 10 three (3) peremptory challenges in prosecutions for misdemeanors.

11 (b) The defendant shall be entitled to twelve (12) peremptory  
 12 challenges in prosecutions for capital murder, § 5-10-101, or capital rape, §  
 13 5-14-114, to eight (8) peremptory challenges in prosecutions for all other  
 14 felonies, and to three (3) peremptory challenges in prosecutions for  
 15 misdemeanors.  
 16

17 SECTION 41. Arkansas Code § 16-42-103(d), concerning the definition of  
 18 "sexual assault" as it pertains to admissibility of evidence of similar  
 19 crimes in sexual assault cases, is amended to read as follows:

20 (d) For purposes of this section, the term “sexual assault” includes  
 21 the following offenses:

- 22 (1) Rape, § 5-14-103;
- 23 (2) Capital rape, § 5-14-114;
- 24 (3) Sexual assault in the first degree, § 5-14-124; and
- 25 ~~(3)(4)~~ Sexual assault in the second degree, § 5-14-125.

26  
 27 SECTION 42. Arkansas Code § 16-87-205(c)(1), concerning the Capital,  
 28 Conflicts, and Appellate Office, is amended to read as follows:

29 (c)(1)~~(A)(i)~~ The Arkansas Public Defender Commission shall be  
 30 appointed by the trial court in ~~the following situation:~~

31 ~~(A)(i)~~ In a case involving capital murder cases, § 5-10-101, or  
 32 capital rape, § 5-14-114, in which the death penalty is sought if a conflict  
 33 of interest is determined by the court to exist between the trial public  
 34 defender’s office and the indigent person or if for any other reason the  
 35 court determines that the trial public defender cannot or should not  
 36 represent the indigent person.

1 (ii) The representation may be in conjunction with  
2 appointed private attorneys.

3 ~~(iii)~~(B) In a case involving capital murder ~~cases~~, § 5-10-101,  
4 or capital rape, § 5-14-114, unless the prosecuting attorney informs the  
5 circuit court at the arraignment of the defendant that the death penalty will  
6 not be sought, it shall be presumed for purposes of this section that the  
7 death penalty will be sought.

8 ~~(iv)(a)(C)(i)~~ The executive director may assign the Capital,  
9 Conflicts, and Appellate Office, a trial public defender from another area, a  
10 private attorney whose name appears on a list of attorneys maintained by the  
11 commission, or a combination of private and public defender attorneys to  
12 represent the indigent person.

13 ~~(b)~~(ii) The executive director shall notify the trial  
14 court of the assignment, and an order reflecting the assignment shall be  
15 entered.  
16

17 SECTION 43. Arkansas Code § 16-87-212(c), concerning court fees and  
18 expenses, is amended to read as follows:

19 (c) At the discretion of the commission, expenses in a case involving  
20 capital murder cases, § 5-10-101, or capital rape, § 5-14-114, and all  
21 proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall  
22 be paid entirely by the commission.  
23

24 SECTION 44. Arkansas Code § 16-87-218(c)(1) and (2), concerning the  
25 costs for legal services provided by the Arkansas Public Defender Commission,  
26 are amended to read as follows:

27 (1) Capital murder, § 5-10-101, or capital rape, § 5-14-114, in  
28 which the death penalty was given, including any appeal and post-conviction  
29 remedy, twelve thousand five hundred dollars (\$12,500);

30 (2) Capital murder, § 5-10-101, or capital rape, § 5-14-114, in  
31 which the death penalty was not given, murder in the first degree, § 5-10-  
32 102, or Class Y felony:

33 (A) For an early disposition, five hundred dollars (\$500);

34 (B) For a negotiated plea or disposition before trial, two  
35 thousand five hundred dollars (\$2,500); or

36 (C) For a trial or an extended matter, seven thousand five

1 hundred dollars (\$7,500);

2

3 SECTION 45. Arkansas Code § 16-90-120(e)(1)(A)(iv), concerning the  
4 inclusion of the offense of rape as a seventy-percent offense as it pertains  
5 to the felony with a firearm sentence enhancement, is amended to read as  
6 follows:

7 (iv) Rape, § 5-14-103, or capital rape, § 5-14-114;

8

9 SECTION 46. Arkansas Code § 16-90-803(b)(2)(C)(iii)(a), concerning the  
10 calculation of prior offenses as it pertains to the voluntary presumptive  
11 standards under the sentencing guidelines, is amended to read as follows:

12 (a) Each adjudication is worth one-quarter  
13 (0.25) point, except for offenses adjudicated as delinquent which if  
14 committed by an adult are worth one (1) point and would have constituted:

15 (1) Capital murder, § 5-10-101;

16 (2) Murder in the first degree, § 5-10-  
17 102;

18 (3) Murder in the second degree, § 5-10-  
19 103;

20 (4) Kidnapping ~~in the first degree,~~ § 5-  
21 11-102;

22 (5) Aggravated robbery, § 5-12-103;

23 (6) Rape, § 5-14-103, or capital rape, §  
24 5-14-114;

25 (7) Battery in the first degree, § 5-13-  
26 201; or

27 (8) Aggravated assault upon a law  
28 enforcement officer or an employee of a correctional facility, § 5-13-211, if  
29 a Class Y felony.

30

31 SECTION 47. Arkansas Code § 16-90-803(b)(5), concerning voluntary  
32 presumptive standards in sentencing, is amended to read as follows:

33 (5) Capital murder ~~is,~~ § 5-10-101, and capital rape, § 5-14-114,  
34 are excluded from the sentencing standards and ~~is~~ are subject to the  
35 procedures in § 5-4-601 et seq.

36

1 SECTION 48. Arkansas Code § 16-91-110(b)(2), concerning bail bonds,  
2 are amended to read as follows:

3 (2) When a criminal defendant has been found guilty of or  
4 pleaded guilty or nolo contendere to a criminal offense of capital murder, §  
5 5-10-101, or capital rape, § 5-14-114, the court shall not release the  
6 defendant on bail or otherwise pending appeal or for any reason.

7  
8 SECTION 49. Arkansas Code § 16-91-202(e)(2)(A), concerning the  
9 qualifications of defense counsel in a capital case, is amended to read as  
10 follows:

11 (2)(A) In all such cases, the attorney shall have been admitted  
12 to practice law for not less than five (5) years and shall have had no fewer  
13 than three (3) years' experience in the actual handling of capital murder or  
14 other capital case prosecutions or capital murder or other capital case post-  
15 conviction proceedings in Arkansas courts.

16  
17 SECTION 50. Arkansas Code § 16-93-204(d)(2)(A), concerning executive  
18 clemency, is amended to read as follows:

19 (2)(A) Before considering an application for a pardon or  
20 recommending a commutation of sentence of a person who was convicted of  
21 capital murder, § 5-10-101, capital rape, § 5-14-114, or a Class Y felony,  
22 Class A felony, or Class B felony, the board shall notify the victim of the  
23 crime or the victim's next of kin, if he or she files a request for notice  
24 with the prosecuting attorney.

25  
26 SECTION 51. Arkansas Code § 16-93-207(d)(1)(B), concerning  
27 applications for pardon, commutation of sentence, and remission of fines and  
28 forfeitures, is amended to read as follows:

29 (B) Eight (8) years from the date of the denial if the  
30 applicant is serving a sentence of life without parole for capital murder, §  
31 5-10-101, or capital rape, § 5-14-114.

32  
33 SECTION 52. Arkansas Code § 16-93-612(e), concerning the date of an  
34 offense and which parole eligibility statute will govern, is amended to add  
35 an additional subdivision to read as follows:

36 (5) If the felony is capital rape, § 5-14-114, and the offense

1 occurred on or after the effective date of this act, § 16-93-623 governs the  
2 person's parole eligibility.

3  
4 SECTION 53. Arkansas Code § 16-118-118(a)(3)(A), concerning the  
5 definition of "sexual abuse" and the acts that constitute "sexual abuse" in  
6 relation to civil actions for vulnerable victims of sexual abuse, is amended  
7 to read as follows:

8 (A) Rape, § 5-14-103, or capital rape, § 5-14-114;  
9

10 SECTION 54. Arkansas Code § 17-3-102(a)(15), concerning the inclusion  
11 of rape as a disqualifying offense for the purposes of a background check  
12 under professional and occupational licensing, is amended to read as follows:

13 (15) Rape as prohibited in § 5-14-103 and capital rape as  
14 prohibited in § 5-14-114;  
15

16 SECTION 55. Arkansas Code § 17-3-102(e)(5), concerning the inclusion  
17 of rape as a disqualifying offense for the purposes of a background check  
18 under professional and occupational licensing, is amended to read as follows:

19 (5) Rape as prohibited in § 5-14-103 and capital rape as  
20 prohibited in § 5-14-114;  
21

22 SECTION 56. Arkansas Code § 17-17-312(f)(15), concerning the inclusion  
23 of rape as a disqualifying offense for the purposes of a background check  
24 under auctioneer licensing, is amended to read as follows:

25 (15) Rape, as prohibited in § 5-14-103 and capital rape as  
26 prohibited in § 5-14-114;  
27

28 SECTION 57. Arkansas Code § 18-16-112(a)(4)(A), concerning the  
29 definition of "sex crime" as it pertains to protection for victims of  
30 domestic abuse in landlord tenant law, is amended to add an additional  
31 subdivision to read as follows:

32 (xxiii) Capital rape, § 5-14-114;  
33

34 SECTION 58. Arkansas Code § 20-13-1106(a)(1)(N), concerning the  
35 inclusion of rape as a disqualifying offense for the purposes of a background  
36 check under emergency medical services licensing, is amended to read as

1 follows:

2 (N) Rape as prohibited in § 5-14-103 and capital rape as  
3 prohibited in § 5-14-114;  
4

5 SECTION 59. Arkansas Code § 20-16-1305(b), concerning exemptions for  
6 medical personnel under the Arkansas Human Heartbeat Protection Act, is  
7 amended to read as follows:

8 (b) This subchapter does not apply to:

9 (1) An abortion performed to save the life of the mother;

10 (2)(A) A pregnancy that results from rape under § 5-14-103,  
11 capital rape under § 5-14-114, or incest under § 5-26-202 when documentation  
12 is presented that states that the crime has been reported to law enforcement.

13 (B) The physician or abortion facility shall:

14 (i) File the documentation that a crime has been  
15 reported to law enforcement in the pregnant woman’s medical record; and

16 (ii) Report to the Department of Health the number  
17 of abortions performed because of rape or incest; or

18 (3) A medical emergency.  
19

20 SECTION 60. Arkansas Code § 20-16-1405(a)(3)(A), concerning exemptions  
21 under the Pain-Capable Unborn Child Protection Act, is amended to read as  
22 follows:

23 (3)(A) Subdivision (a)(1) of this section does not apply if the  
24 pregnancy results from rape under § 5-14-103, capital rape under § 5-14-114,  
25 or incest under § 5-26-202 when documentation is presented that states that  
26 the crime has been reported to law enforcement.  
27

28 SECTION 61. Arkansas Code § 20-16-2004(a) and (b), concerning an  
29 abortion being limited to eighteen (18) weeks’ gestation under the Cherish  
30 Act, are amended to read as follows:

31 (a) Except in a medical emergency or if the pregnancy results from a  
32 rape under § 5-14-103, capital rape under § 5-14-114, or incest under § 5-26-  
33 202 when documentation is presented that states that the crime has been  
34 reported to law enforcement, a person shall not perform, induce, or attempt  
35 to perform or induce an abortion unless the physician or referring physician  
36 has:

1 (1) Made a determination of the probable gestational age of the  
2 unborn human being according to standard medical practices and techniques  
3 used in the medical community; and

4 (2) Documented the probable gestational age in the medical  
5 records of the pregnant woman and, if required, in a report with the  
6 Department of Health as described in subsection (c) of this section.

7 (b) Except in a medical emergency or if the pregnancy results from a  
8 rape under § 5-14-103, capital rape under § 5-14-114, or incest under § 5-26-  
9 202 when documentation is presented that states that the crime has been  
10 reported to law enforcement, a person shall not intentionally or knowingly  
11 perform, induce, or attempt to perform or induce an abortion of an unborn  
12 human being if the probable gestational age of the unborn human being is  
13 determined to be greater than eighteen (18) weeks' gestation.  
14

15 SECTION 62. Arkansas Code § 20-38-105(c)(2)(A)(v), concerning the  
16 inclusion of rape as a disqualifying offense for the purposes of a background  
17 check under health and safety licensing for a medical services provider, is  
18 amended to read as follows:

19 (v) Rape, § 5-14-103, and capital rape, § 5-14-114;

20  
21 SECTION 63. Arkansas Code § 21-15-102(f)(14), concerning the inclusion  
22 of rape as a disqualifying offense for the purposes of a background check for  
23 a position involving direct contact with children and persons with mental  
24 illness or a developmental disability, is amended to read as follows:

25 (14) Rape, as prohibited in § 5-14-103, or capital rape, as  
26 prohibited in § 5-14-114;

27  
28 SECTION 64. Arkansas Code § 21-15-102(g)(2)(D), concerning the  
29 inclusion of rape as a disqualifying offense for the purposes of a background  
30 check for a position involving direct contact with children and persons with  
31 mental illness or a developmental disability, is amended to read as follows:

32 (D) Rape, as prohibited in § 5-14-103, or capital rape, as  
33 prohibited in § 5-14-114;

34  
35 SECTION 65. Arkansas Code § 21-15-103(g)(14), concerning the inclusion  
36 of rape as a disqualifying offense for the purposes of a background check for

1 a designated position in a state agency, is amended to read as follows:

2 (14) Rape, as prohibited in § 5-14-103, or capital rape, as  
3 prohibited in § 5-14-114;

4  
5 SECTION 66. Arkansas Code § 21-15-103(h)(2)(D), concerning the  
6 inclusion of rape as an offense for which expungement shall not be considered  
7 a conviction for the purposes of a background check for a designated position  
8 in a state agency, is amended to read as follows:

9 (D) Rape, as prohibited in § 5-14-103, or capital rape, as  
10 prohibited in § 5-14-114;

11  
12 SECTION 67. Arkansas Code § 21-15-104(c)(5), concerning the inclusion  
13 of rape as an offense that may not be waived for the purposes of a background  
14 check by the director of a state agency, is amended to read as follows:

15 (5) Rape, § 5-14-103, and capital rape, § 5-14-114;