

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: S4/26/21

# A Bill

HOUSE BILL 1934

5 By: Representatives Miller, Payton  
6

## For An Act To Be Entitled

8 AN ACT CONCERNING THE AVAILABLE SENTENCES FOR CERTAIN  
9 SEX OFFENSES INVOLVING A CHILD; AND FOR OTHER  
10 PURPOSES.  
11

## Subtitle

12 CONCERNING THE AVAILABLE SENTENCES FOR  
13 CERTAIN SEX OFFENSES INVOLVING A CHILD.  
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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20 SECTION 1. Arkansas Code § 5-4-104(c), concerning authorized sentences  
21 for a Class Y felony or murder in the second degree, is amended to read as  
22 follows:

23 (c)(1)(A) A Except as provided under subdivision (c)(2) of this  
24 section, a defendant convicted of a Class Y felony or murder in the second  
25 degree, § 5-10-103, shall be sentenced to a term of imprisonment in  
26 accordance with §§ 5-4-401 – 5-4-404.

27 ~~(2)(B)~~ In addition to imposing a term of imprisonment, the  
28 trial court may sentence a defendant convicted of a Class Y felony or murder  
29 in the second degree, § 5-10-103, to any one (1) or more of the following:

30 ~~(A)(i)~~ Pay a fine as authorized by §§ 5-4-201 and 5-  
31 4-202;

32 ~~(B)(ii)~~ Make restitution as authorized by § 5-4-205;  
33 or

34 ~~(C)(iii)~~ Suspend imposition of an additional term of  
35 imprisonment, as authorized by subdivision (e)(3) of this section.

36 (2) A defendant who was eighteen (18) years of age or older at



1 the time of the offense and who was convicted of one (1) or more of the  
 2 following Class Y felonies in which the victim was less than fourteen (14)  
 3 years of age at the time of the offense shall be sentenced to life without  
 4 the possibility of parole:

5 (A) Rape involving forcible compulsion, § 5-14-103(a)(1);

6 (B) Trafficking of persons, § 5-18-103;

7 (C) Engaging children in sexually explicit conduct for use  
 8 in visual or print medium, § 5-27-303;

9 (D) Transportation of minors for prohibited sexual  
 10 conduct, § 5-27-305;

11 (E) Producing, directing, or promoting a sexual  
 12 performance by a child, § 5-27-403; and

13 (F) Computer exploitation of a child in the first degree,  
 14 § 5-27-605.

15  
 16 SECTION 2. Arkansas Code § 5-14-103(c), concerning the sentence for  
 17 rape, is amended to read as follows:

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

19 (2) ~~Any person~~ Except as provided under § 5-4-104(c)(2), a  
 20 person who pleads guilty or nolo contendere to or is found guilty of rape  
 21 involving a victim who is less than fourteen (14) years of age shall be  
 22 sentenced to a minimum term of imprisonment of twenty-five (25) years.  
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24 SECTION 3. Arkansas Code § 5-27-303 is amended to read as follows:

25 5-27-303. Engaging children in sexually explicit conduct for use in  
 26 visual or print medium.

27 (a) Any person eighteen (18) years of age or older who employs, uses,  
 28 persuades, induces, entices, or coerces any child to engage in or who has a  
 29 child assist any other person to engage in any sexually explicit conduct for  
 30 the purpose of producing any visual or print medium depicting the sexually  
 31 explicit conduct upon conviction is guilty of a Class Y felony+

32 ~~(1) Class B felony for the first offense; and~~

33 ~~(2) Class A felony for a subsequent offense.~~

34 (b) Any parent, legal guardian, or person having custody or control of  
 35 a child who knowingly permits the child to engage in or to assist any other  
 36 person to engage in sexually explicit conduct for the purpose of producing

1 any visual or print medium depicting the sexually explicit conduct upon  
2 conviction is guilty of a Class Y felony+

3 ~~(1) Class B felony for the first offense; and~~

4 ~~(2) Class A felony for a subsequent offense.~~

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6 SECTION 4. Arkansas Code § 5-27-305 is amended to read as follows:

7 5-27-305. Transportation of minors for prohibited sexual conduct.

8 (a) A person commits the offense of transportation of a minor for  
9 prohibited sexual conduct if the person transports, finances in whole or part  
10 the transportation of, or otherwise causes or facilitates the movement of any  
11 minor, and the actor:

12 (1) Knows or has reason to know that prostitution or sexually  
13 explicit conduct involving the minor will be commercially exploited by any  
14 person; and

15 (2) Acts with the purpose that the minor will engage in:

16 (A) Prostitution; or

17 (B) Sexually explicit conduct.

18 (b) Transportation of a minor for prohibited sexual conduct is a Class  
19 A Y felony.

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21 SECTION 5. Arkansas Code § 5-27-403 is amended to read as follows:

22 5-27-403. Producing, directing, or promoting a sexual performance by a  
23 child.

24 (a) It is unlawful for a person, knowing the character and content of  
25 the material, to produce, direct, or promote a performance that includes  
26 sexual conduct by a child under eighteen (18) years of age.

27 (b) A person who violates this section upon conviction is guilty of a  
28 Class B Y felony.

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30 SECTION 6. Arkansas Code § 5-27-605 is amended to read as follows:

31 5-27-605. Computer exploitation of a child.

32 (a)(1) A person commits computer exploitation of a child in the first  
33 degree if the person:

34 (A) Causes or permits a child to engage in sexually  
35 explicit conduct; and

36 (B) Knows, has reason to know, or intends that the

1 prohibited conduct may be:

- 2 (i) Photographed;  
 3 (ii) Filmed;  
 4 (iii) Reproduced;  
 5 (iv) Reconstructed in any manner, including on the  
 6 ~~Internet~~ internet; or  
 7 (v) Part of an exhibition or performance.

8 (2) Computer exploitation of a child in the first degree is a  
 9 ~~(A) Class B felony for the first offense; and~~  
 10 ~~(B) Class A Y felony for a subsequent offense.~~

11 (b)(1) A person commits computer exploitation of a child in the second  
 12 degree if the person:

- 13 (A) Photographs or films a child engaged in sexually  
 14 explicit conduct; or  
 15 (B) Uses any device, including a computer, to reproduce or  
 16 reconstruct the image of a child engaged in sexually explicit conduct.

17 (2) Computer exploitation of a child in the second degree is a  
 18 Class C felony.

19

20 SECTION 7. Arkansas Code § 16-93-613 is amended to read as follows:

21 16-93-613. Parole eligibility – Class Y, Class A, or Class B felonies.

22 (a) A person who commits a Class Y felony, Class A felony, or Class B  
 23 felony, except those drug offenses addressed in § 16-93-618 or those Class Y  
 24 felonies addressed in § 5-4-104(c)(2), § 16-93-614, or § 16-93-618, and who  
 25 shall be convicted and incarcerated for that felony, shall be eligible for  
 26 release on parole as follows:

27 (1) An inmate under sentence of death or life imprisonment  
 28 without parole is not eligible for release on parole but may be pardoned or  
 29 have his or her sentence commuted by the Governor, as provided by law; and

30 (2)(A) An inmate sentenced to life imprisonment is not eligible  
 31 for release on parole unless the sentence is commuted to a term of years by  
 32 executive clemency.

33 (B) Upon commutation, the inmate is eligible for release  
 34 on parole as provided in this subchapter.

35 (b) For parole eligibility purposes, consecutive sentences by one (1)  
 36 or more courts or for one (1) or more counts are to be considered as a single

1 commitment reflecting the cumulative sentence to be served.

2 (c) Except as provided for under § 16-93-621, for an offense committed  
3 before, on, or after March 20, 2017, a person who was a minor at the time of  
4 committing an offense listed under subsection (a) of this section is eligible  
5 for release on parole under this section.

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7 SECTION 8. Arkansas Code § 16-93-615(a)(1)(A), concerning parole  
8 eligibility procedures, is amended to read as follows:

9 (a)(1)(A) An inmate under sentence for any felony, except those listed  
10 in § 5-4-104(c)(2) or subsection (b) of this section, shall be transferred  
11 from the ~~Department~~ Division of Correction to the Department of Community  
12 Correction under this section and §§ 16-93-614, 16-93-616, and 16-93-617,  
13 subject to rules promulgated by the Board of Corrections or the Parole Board  
14 and conditions adopted by the Parole Board.

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16 SECTION 9. Arkansas Code § 16-93-618(a)(1), concerning parole  
17 eligibility for certain offenses, is amended to read as follows:

18 (a)(1) Notwithstanding any law allowing the award of meritorious good  
19 time or any other law to the contrary, a person who is found guilty of or  
20 pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(I) of this  
21 section shall not be eligible for parole or community correction transfer,  
22 except as provided in subdivision (a)(3) or subsection (c) of this section,  
23 until the person serves seventy percent (70%) of the term of imprisonment to  
24 which the person is sentenced, including a sentence prescribed under § 5-4-  
25 501:

26 (A) Murder in the first degree, § 5-10-102;

27 (B) Kidnapping, Class Y felony, § 5-11-102;

28 (C) Aggravated robbery, § 5-12-103;

29 (D) Rape, § 5-14-103, unless the person was sentenced to  
30 life without the possibility of parole;

31 (E) Trafficking of persons, Class Y felony, § 5-18-103,  
32 unless the person was sentenced to life without the possibility of parole;

33 (F) Causing a catastrophe, § 5-38-202(a);

34 (G) Manufacturing methamphetamine, § 5-64-423(a) or the  
35 former § 5-64-401;

36 (H) Trafficking methamphetamine, § 5-64-440(b)(1); or

1 (I) Possession of drug paraphernalia with the purpose to  
2 manufacture methamphetamine, former § 5-64-403(c)(5).

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4 /s/Miller

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7 **APPROVED: 5/3/21**  
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