



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1175
Sponsored by Representative Tucker**

Subtitle TO REQUIRE LIFETIME REGISTRATION ON THE ARKANSAS SEX OFFENDER REGISTRY FOR A PERSON CONVICTED OF RAPE WHEN THE RAPE INVOLVED THE USE OF FORCE.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 12-12-919(a), Termination of obligation to register, by adding a conviction for rape by forcible compulsion pursuant to A.C.A. § 5-14-103(a)(1), or other substantially similar offense in another jurisdiction, to the list of offenses for which lifetime registration is required. Failure to comply with registration requirements will result in an offender being subject to arrest and prosecution under A.C.A. § 12-12-904(a), Failure to comply with registration and reporting requirements, Class C felony. See attached for a reprint of relevant code provisions.

Impact Information

The following information is provided for informational purposes only. According to the Arkansas Crime Information Center (ACIC), the number of rape convictions since their database went online in the mid-1970s is 4,227. However, ACIC’s data does not distinguish the number of rapes committed by forcible compulsion. ACIC reports that since the Arkansas Sex Offender Registry began in 1998, 209 offenders have been removed from the Registry. Of those 209 offenders, data does not differentiate the types of crimes committed.

The Arkansas Department of Correction (ADC) reports that as of January 20, 2017, that there are 1,594 offenders serving a sentence for A.C.A. § 5-14-103, Rape, Class Y felony, as currently written. The ADC reports that there are 554 offenders serving a sentence for A.C.A. § 12-12-904, Failure to comply with registration and reporting requirements, Class C felony. 208 of these offenders are serving a sentence where A.C.A. § 12-12-904 is their most serious offense.

¹ This impact assessment was prepared (1/27/2017, 12:59 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y 10-40 years or life
Class A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

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

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

A.C.A. § 12-12-919. Termination of obligation to register.

(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; or
- (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.

(b) (1) (A) (i) Any other sex offender required to register under this subchapter may apply for an order terminating the obligation to register to the sentencing court fifteen (15) years after release from incarceration or other institution or fifteen (15) years after having been placed on probation or any other form of community supervision by the court.

(ii) A sex offender sentenced in another state but permanently residing in Arkansas may apply for an order terminating the obligation to register to the court of the county in which the sex offender resides.

(B) (i) The court shall hold a hearing on the application at which the applicant and any interested persons may present witnesses and other evidence.

(ii) No less than twenty (20) days before the date of the hearing on the application, a copy of the application for termination of the obligation to register shall be served on:

(a) The prosecutor of the county in which the adjudication of guilt triggering registration was obtained if the sex offender was convicted in this state; or

(b) The prosecutor of the county where a sex offender resides if the sex offender was convicted in another state.

(iii) A copy also shall be served to the Arkansas Sex Offender Registry in the Arkansas Crime Information Center and to Community Notification Assessment at least twenty (20) days before the hearing.

(2) The court shall grant an order terminating the obligation to register upon proof by a preponderance of the evidence that:

(A) The applicant, for a period of fifteen (15) years after the applicant was released from prison or other institution, placed on parole, supervised release, or probation has not been adjudicated guilty of a sex offense; and

(B) The applicant is not likely to pose a threat to the safety of others.

(3) (A) A sex offender required to register as a result of a conviction for permitting the physical abuse of a minor under § 5-27-221 may apply for termination of the obligation to register at any time after July 22, 2015.

(B) The court shall grant an order under this subdivision (b)(3) terminating the obligation to register upon proof by a preponderance of the evidence that the facts underlying the offense for which the sex offender is required to register no longer support a requirement to register.

(c) If a court denies a petition to terminate the obligation to register under this section, the sex offender may not file a new petition to terminate the obligation to register under this section before one (1) year from the date the order denying the previous petition was filed.

HISTORY: Acts 1997, No. 989, § 19; 1999, No. 1353, § 13; 2001, No. 1743, § 14; 2003 (2nd Ex. Sess.), No. 21, § 10; 2013, No. 172, § 4; 2013, No. 505, § 17; 2013, No. 1248, § 1; 2015, No. 358, § 11; 2015, No. 1285, § 2.

A.C.A. § 12-12-904. Failure to comply with registration and reporting requirements -- Refusal to cooperate with assessment process.

(a) (1) (A) A person is guilty of a Class C felony who:

(i) Fails to register or verify registration as required under this subchapter;

(ii) Fails to report a change of address, employment, education, or training as required under this subchapter;

(iii) Refuses to cooperate with the assessment process as required under this subchapter; or

(iv) Files false paperwork or documentation regarding verification, change of information, or petitions to be removed from the registry.

(B) (i) Upon conviction, a sex offender who fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2) is guilty of a Class C felony.

(ii) If a sex offender fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2), as soon as administratively feasible the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall contact the local law enforcement agency having jurisdiction to report the violation of subdivision (a)(1)(B)(i) of this section.

(2) It is an affirmative defense to prosecution if the person:

(A) Delayed reporting a change in address because of:

(i) An eviction;

(ii) A natural disaster; or

(iii) Any other unforeseen circumstance; and

(B) Provided the new address to the local law enforcement agency having jurisdiction in writing no later than five (5) business days after the person establishes residency.

(b) Any agency or official subject to reporting requirements under this subchapter that knowingly fails to comply with the reporting requirements under this subchapter is guilty of a Class B misdemeanor.

HISTORY: Acts 1997, No. 989, § 11; 1999, No. 1353, § 2; 2001, No. 1743, § 3; 2006 (1st Ex. Sess.), No. 4, § 1; 2007, No. 394, § 3; 2013, No. 172, § 2; 2015, No. 358, § 1.

A.C.A. § 5-14-103. Rape.

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

(1) By forcible compulsion;

(2) Who is incapable of consent because he or she is:

- (A) Physically helpless;
- (B) Mentally defective; or
- (C) Mentally incapacitated;

(3) (A) Who is less than fourteen (14) years of age.

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

(4) (A) Who is a minor and the actor is the victim's:

- (i) Guardian;
- (ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;
- (iii) Brother or sister of the whole or half blood or by adoption; or
- (iv) Nephew, niece, or first cousin.

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

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

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

(2) Any person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.

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

- (A) A defendant pleads guilty or nolo contendere; or
- (B) All of the defendant's appeals have been exhausted and the defendant remains convicted.

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

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

HISTORY: Acts 1975, No. 280, § 1803; 1981, No. 620, § 12; 1985, No. 281, § 2; 1985, No. 919, § 2; A.S.A. 1947, § 41-1803; Acts 1993, No. 935, § 1; 1997, No. 831, § 1; 2001, No. 299, § 1; 2001, No. 1738, § 1; 2003, No. 1469, § 3; 2006 (1st Ex. Sess.), No. 5, § 2; 2009, No. 748, § 8; 2013, No. 210, § 2.