

ARKANSAS SENATE

93rd General Assembly - Regular Session, 2021

Amendment Form

Subtitle of Senate Bill No. 28

TO MAKE RAPE OF A CHILD BY FORCIBLE COMPULSION A CAPITAL OFFENSE.

Amendment No. 1 to Senate Bill 28

Amend Senate Bill No. 28 as originally introduced:

Add Senator Gilmore as a cosponsor of the bill

AND

Add Representative Underwood as a cosponsor of the bill

AND

Delete everything after the enacting clause and substitute the following:

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

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

- (A) Capital murder, § 5-10-101;
- (B) Murder in the first degree, § 5-10-102;
- (C) Murder in the second degree, § 5-10-103;
- (D) Rape, § 5-14-103, if the victim was a minor at the time of the offense, and rape of a child by forcible compulsion, § 5-14-114;
- (E) Sexual indecency with a child, § 5-14-110;
- (F) Sexual assault in the first degree, § 5-14-124;
- (G) Sexual assault in the second degree, § 5-14-125, if the victim was a minor at the time of the offense;
- (H) Incest, § 5-26-202, if the victim was a minor at the time of the offense;
- (I) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- (J) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (K) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;



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

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

SECTION 2. Arkansas Code § 5-1-109(b)(1)(B), concerning the statute of limitations for rape, is amended to read as follows:

(B) However, for rape, § 5-14-103, and rape of a child by forcible compulsion, § 5-14-114, the period of limitation is eliminated if biological evidence of the alleged perpetrator is identified that is capable of producing a deoxyribonucleic acid (DNA) profile;

SECTION 3. Arkansas Code § 5-3-203 is amended to read as follows:

5-3-203. Classification.

A criminal attempt is a:

(1) Class Y felony if the offense attempted is capital murder, § 5-10-101;

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

(3) Class B felony if the offense attempted is a Class A felony;

(4) Class C felony if the offense attempted is a Class B felony;

(5) Class D felony if the offense attempted is a Class C felony;

(6) Class A misdemeanor if the offense attempted is a Class D felony or an unclassified felony;

(7) Class B misdemeanor if the offense attempted is a Class A misdemeanor;

(8) Class C misdemeanor if the offense attempted is a Class B misdemeanor; or

(9) Violation if the offense attempted is a Class C misdemeanor or an unclassified misdemeanor.

SECTION 4. 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, rape of a child by forcible compulsion, § 5-14-114, or a Class Y felony;

SECTION 5. 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, rape of a child by forcible compulsion, § 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 6. Arkansas Code § 5-4-104(a)-(e), concerning authorized sentences, are amended to read as follows:

(a) No defendant convicted of an offense shall be sentenced otherwise than in accordance with this chapter.

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

(c)(1) A defendant convicted of a Class Y felony or murder in the second degree, § 5-10-103, shall be sentenced to a term of imprisonment in accordance with §§ 5-4-401 – 5-4-404.

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

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

(B) Make restitution as authorized by § 5-4-205; or

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

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

(1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;

(2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314;

(3) Payment of a fine as authorized by §§ 5-4-201 and 5-4-202;

(4) Restitution as authorized by a provision of § 5-4-205; or

(5) Imprisonment and payment of a fine.

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

(i) Capital murder, § 5-10-101;

(ii) Treason, § 5-51-201;

(iii) Rape of a child by forcible compulsion, § 5-14-114;

~~(iii)~~(iv) A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section;

~~(iv)~~(v) Driving or boating while intoxicated, § 5-65-103;

~~(v)~~(vi) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section; or

~~(vi)~~(vii) Engaging in a continuing criminal enterprise, § 5-64-405.

(B)(i) In any other case, the court may suspend imposition of sentence or place the defendant on probation, in accordance with §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314, except as otherwise specifically prohibited by statute.

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

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

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

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

SECTION 7. Arkansas Code § 5-4-106(b), concerning an extended no contact order, is amended to read as follows:

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

(1) Capital murder, § 5-10-101, or attempted capital murder;

(2) Murder in the first degree, § 5-10-102, or attempted murder in the first degree;

(3) Murder in the second degree, § 5-10-103, or attempted murder in the second degree;

(4) Kidnapping, § 5-11-102;

(5) Battery in the first degree, § 5-13-201;

(6) Battery in the second degree, § 5-13-202;

(7) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

(8) Sexual assault in the first degree, § 5-14-124;

(9) Domestic battering in the first degree, § 5-26-303;

(10) Domestic battering in the second degree, § 5-26-304; or

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

SECTION 8. Arkansas Code § 5-4-301(a)(1), concerning offenses for which suspension or probation is prohibited, is amended to read as follows:

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

(A) Capital murder, § 5-10-101;

(B) Treason, § 5-51-201;

(C) Rape of a child by forcible compulsion, § 5-14-114;

~~(C)~~(D) A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c);
~~(D)~~(E) Driving or boating while intoxicated, § 5-65-103;
~~(E)~~(F) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c); or
~~(F)~~(G) Engaging in a continuing criminal enterprise, § 5-64-405.

SECTION 9. Arkansas Code § 5-4-501(c)(2), concerning habitual offenders and what offenses are considered serious felonies involving violence, is amended to read as follows:

(2) As used in this subsection, "serious felony involving violence" means:

- (A) Any of the following felonies:
- (i) Murder in the first degree, § 5-10-102;
 - (ii) Murder in the second degree, § 5-10-103;
 - (iii) Kidnapping, § 5-11-102, involving an activity making it a Class Y felony;
 - (iv) Aggravated robbery, § 5-12-103;
 - (v) Terroristic act, § 5-13-310, involving an activity making it a Class Y felony;
 - (vi) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;
 - (vii) Sexual assault in the first degree, § 5-14-124;
 - (viii) Causing a catastrophe, § 5-38-202(a);
 - (ix) Aggravated residential burglary, § 5-39-204; or
 - (x) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or
- (B) A conviction of a comparable serious felony involving violence from another jurisdiction.

SECTION 10. Arkansas Code § 5-4-501(d)(2)(A), concerning habitual offenders and what rape offenses are considered felonies involving violence, is amended to read as follows:

- (A) Any of the following felonies:
- (i) Murder in the first degree, § 5-10-102;
 - (ii) Murder in the second degree, § 5-10-103;
 - (iii) Kidnapping, § 5-11-102;
 - (iv) Aggravated robbery, § 5-12-103;
 - (v) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;
 - (vi) Battery in the first degree, § 5-13-201;
 - (vii) Terroristic act, § 5-13-310;
 - (viii) Sexual assault in the first degree, § 5-14-124;
 - (ix) Sexual assault in the second degree, § 5-14-125;
 - (x) Domestic battering in the first degree, § 5-26-303;
 - (xi) Residential burglary, § 5-39-201(a);
 - (xii) Aggravated residential burglary, § 5-39-204;

(xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(xiv) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;

(xv) A felony attempt, solicitation, or conspiracy to commit:

- (a) Capital murder, § 5-10-101;
- (b) Murder in the first degree, § 5-10-102;
- (c) Murder in the second degree, § 5-10-103;
- (d) Kidnapping, § 5-11-102;
- (e) Aggravated robbery, § 5-12-103;
- (f) Aggravated assault upon a law enforcement

officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;

(g) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

(h) Battery in the first degree, § 5-13-201;

(i) Domestic battering in the first degree, § 5-26-303;

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

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

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

SECTION 11. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended to read as follows:

Subchapter 6

– Trial and Sentence – Capital ~~Murder~~ Offenses

5-4-601. Legislative intent.

(a) In enacting this subchapter, it is the intent of the General Assembly to specify the procedures and standards pursuant to which a sentencing body shall conform in making a determination as to whether a sentence of death is to be imposed upon a conviction of capital murder for capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114.

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

~~(1) Capital murder is capital murder, § 5-10-101, treason, § 5-51-201, and rape of a child by forcible compulsion, § 5-14-114, are punishable by life imprisonment without parole; and~~

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

5-4-602. Capital ~~murder~~ offense charge – Trial procedure.

The following procedures govern a trial of a person charged with capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114;

(1) The jury shall first hear all evidence relevant to the charge and shall then retire to reach a verdict of guilt or innocence;

(2) If the defendant is found not guilty of the capital offense charged but guilty of a lesser included offense, the sentence shall be determined and imposed as provided by law;

(3)(A) If the defendant is found guilty of ~~capital murder~~ the capital offense, the same jury shall sit again in order to:

(i) Hear additional evidence as provided by subdivisions (4) and (5) of this section; and

(ii) Determine the sentence in the manner provided by § 5-4-603.

(B) However, if the state waives the death penalty, stipulates that no aggravating circumstance exists, or stipulates that mitigating circumstances outweigh aggravating circumstances, then:

(i) A hearing under subdivision (3)(A) of this section is not required; and

(ii) The trial court shall sentence the defendant to life imprisonment without parole.

(C) If the defendant was less than eighteen (18) years of age at the time of the offense, then a hearing under subdivision (3)(A) of this section is not required;

(4)(A) If the defendant and the state are accorded an opportunity to rebut the evidence, in determining the sentence evidence may be presented to the jury as to any:

(i) Matter relating to an aggravating circumstance enumerated in § 5-4-604;

(ii) Mitigating circumstance; or

(iii) Other matter relevant to punishment, including, but not limited to, victim impact evidence.

(B)(i) Evidence as to any mitigating circumstance may be presented by either the state or the defendant regardless of the evidence's admissibility under the rules governing admission of evidence in a trial of a criminal matter.

(ii) However, mitigating circumstance evidence shall be relevant to the issue of punishment, including, but not limited to, the nature and circumstances of the crime, and the defendant's character, background, history, and mental and physical condition as set forth in § 5-4-605.

(C) The admissibility of evidence relevant to an aggravating circumstance set forth in § 5-4-604 is governed by the rules governing the admission of evidence in a trial of a criminal matter.

(D) Any evidence admitted at the trial relevant to punishment may be considered by the jury without the necessity of reintroducing the evidence at the sentencing proceeding; and

(5) The state and the defendant or his or her counsel are permitted to present argument respecting sentencing:

(A) The state shall open the argument;

(B) The defendant is permitted to reply; and

(C) The state is then permitted to reply in rebuttal.

5-4-603. Findings required for death sentence – Harmless error review.

(a) The jury shall impose a sentence of death if the jury unanimously returns written findings that:

(1) An aggravating circumstance exists beyond a reasonable doubt;

(2) Aggravating circumstances outweigh beyond a reasonable doubt all mitigating circumstances found to exist; and

(3) Aggravating circumstances justify a sentence of death beyond a reasonable doubt.

(b) The jury shall impose a sentence of life imprisonment without parole if the jury finds that:

(1) Aggravating circumstances do not exist beyond a reasonable doubt;

(2) Aggravating circumstances do not outweigh beyond a reasonable doubt all mitigating circumstances found to exist; or

(3) Aggravating circumstances do not justify a sentence of death beyond a reasonable doubt.

(c) If the jury does not make any finding required by subsection (a) of this section, the court shall impose a sentence of life imprisonment without parole.

(d)(1) On an appellate review of a death sentence, the Supreme Court shall conduct a harmless error review of the defendant's death sentence if:

(A) The Supreme Court finds that the jury erred in finding the existence of any aggravating circumstance for any reason; and

(B) The jury found no mitigating circumstance.

(2) The Supreme Court shall conduct a harmless error review under subdivision (d)(1) of this section by determining that a remaining aggravating circumstance:

(A) Exists beyond a reasonable doubt; and

(B) Justifies a sentence of death beyond a reasonable doubt.

(e) If the Supreme Court concludes that the erroneous finding of any aggravating circumstance by the jury would not have changed the jury's decision to impose the death penalty on the defendant, then a simple majority of the court may vote to affirm the defendant's death sentence.

5-4-604. Aggravating circumstances.

An aggravating circumstance is limited to the following:

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

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

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

(4) The person in the commission of the capital ~~murder~~ offense knowingly created a great risk of death to a person other than the victim or caused the death of more than one (1) person in the same criminal episode;

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

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

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

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

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

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

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

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

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

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

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

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

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

5-4-605. Mitigating circumstances.

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

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

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

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

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

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

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

5-4-606. Life imprisonment without parole.

A person sentenced to life imprisonment without parole shall:

(1) Be remanded to the custody of the Division of Correction for imprisonment for the remainder of his or her life; and

(2) Not be released except ~~pursuant to~~ under commutation, pardon, or reprieve of the Governor.

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

(a) The pardon of a person convicted of capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, or of a Class Y felony, Class A felony, or Class B felony, or the commutation of a sentence of a person convicted of capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, or of a Class Y felony, Class A felony, or Class B felony, may be granted only in the manner provided in this section.

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

(A) The Secretary of State;

(B) The Attorney General;

(C) The sheriff of the county where the offense was committed;

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

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

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

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

(B) If the application involves a conviction for capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, a notice of the application shall be published by two (2) insertions, separated by a minimum of seven (7) days, in a newspaper of general circulation in the county or counties where the offense or offenses of the applicant were committed.

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

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

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

(A) Applicant's name;

(B) Offense of which the applicant was convicted and the sentence imposed;

(C) Date of the judgment imposing the sentence; and

(D) Effective date of the pardon or commutation.

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

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

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

5-4-608. Waiver of death penalty.

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

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

5-4-609 – 5-4-614. [Reserved.]

5-4-615. Conviction – Punishments.

A person convicted of a capital offense shall be punished by death by lethal injection or by life imprisonment without parole ~~pursuant to~~ under this subchapter.

5-4-616. Procedures following remand of capital ~~case~~ offense after vacation of death sentence – Retroactive application.

(a) Notwithstanding § 5-4-602(3) that requires that the same jury sit in the sentencing phase of a capital ~~murder~~ offense trial, the following shall apply:

(1)(A) Upon any appeal by the defendant when the sentence is of death, if the appellate court finds prejudicial error in the sentencing proceeding only, the appellate court may set aside the sentence of death and remand the case to the trial court in the jurisdiction in which the defendant was originally sentenced.

(B) No error in the sentencing proceeding shall result in the reversal of the conviction for a capital ~~felony~~ offense.

(C) When a capital ~~case~~ offense is remanded after vacation of a death sentence, the prosecutor may move the trial court to:

(i) Impose a sentence of life without parole, and the trial court may impose the sentence of life without parole without a hearing; or

(ii) Impanel a new sentencing jury;

(2) If the prosecutor elects subdivision (a)(1)(C)(ii) of this section the trial court shall impanel a new jury for the purpose of conducting a new sentencing proceeding;

(3) A new sentencing proceeding is governed by ~~the provisions of~~ § 5-4-602(4) and (5) and §§ 5-4-603 – 5-4-605;

(4)(A) Any exhibit and a transcript of any testimony or other evidence properly admitted in the prior trial and sentencing is admissible in the new sentencing proceeding.

(B) Additional relevant evidence may be admitted including testimony of a witness who testified at the previous trial; and

(5) The provisions of this section:

(A) Are procedural; and

(B) Apply retroactively to any defendant sentenced to death after January 1, 1974.

(b) This section ~~shall not be construed to~~ does not amend a provision of § 5-4-602 requiring the same jury to sit in both the guilt and sentencing phases of the original trial.

5-4-617. Method of execution.

(a) The Division of Correction shall carry out the sentence of death by intravenous lethal injection of the drug or drugs described in subsection (c) of this section in an amount sufficient to cause death.

(b) The Director of the Division of Correction or his or her designee may order the dispensation and administration of the drug or drugs described in subsection (c) of this section for the purpose of carrying out the lethal-injection procedure, and a prescription is not required.

(c) The division shall select one (1) of the following options for a lethal-injection protocol, depending on the availability of the drugs:

(1) A barbiturate; or

(2) Midazolam, followed by vecuronium bromide, followed by potassium chloride.

(d) The drug or drugs described in subsection (c) of this section used to carry out the lethal injection shall be:

(1) Approved by the United States Food and Drug Administration and made by a manufacturer approved by the United States Food and Drug Administration;

(2) Obtained from a facility registered with the United States Food and Drug Administration; or

(3) Obtained from a compounding pharmacy that has been accredited by a national organization that accredits compounding pharmacies.

(e) The drugs set forth in subsection (c) of this section shall be administered along with any additional substances, such as saline solution, called for in the instructions.

(f) Catheters, sterile intravenous solution, and other equipment used for the intravenous injection of the drug or drugs set forth in subsection (c) of this section shall be sterilized and prepared in a manner that is safe and commonly performed in connection with the intravenous administration of drugs of that type.

(g) The director shall develop logistical procedures necessary to carry out the sentence of death, including:

(1) The following matters:

(A) Ensuring that the drugs and substances set forth in this section and other necessary supplies for the lethal injection are available for use on the scheduled date of the execution;

- (B) Conducting employee orientation of the lethal injection procedure before the day of the execution;
 - (C) Determining the logistics of the viewing;
 - (D) Coordinating with other governmental agencies involved with security and law enforcement;
 - (E) Transferring the condemned prisoner to the facility where the sentence of death will be carried out;
 - (F) Escorting the condemned prisoner from the holding cell to the execution chamber;
 - (G) Determining the identity, arrival, and departure of the persons involved with carrying out the sentence of death at the facility where the sentence of death will be carried out; and
 - (H) Making arrangements for the disposition of the condemned prisoner's body and personal property; and
- (2) The following matters pertaining to other logistical issues:
- (A) Chaplaincy services;
 - (B) Visitation privileges;
 - (C) Determining the condemned prisoner's death, which shall be pronounced according to accepted medical standards; and
 - (D) Establishing a protocol for any necessary mixing or reconstitution of the drugs and substances set forth in this section in accordance with the instructions.

(h) The procedures for carrying out the sentence of death and related matters are not subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(i)(1) Except as provided for under subdivision (i)(2) of this section, a person shall not disclose in response to a request under the Freedom of Information Act of 1967, § 25-19-101 et seq., or in response to discovery under the Arkansas Rules of Civil Procedure, or otherwise, any of the following:

- (A) Documents, records, or information that may identify or reasonably lead to the identification of entities or persons who participate in the execution process or administer lethal injections;
- (B) Documents, records, or information that may identify or reasonably lead directly or indirectly to the identification of an entity or person who compounds, synthesizes, tests, sells, supplies, manufactures, transports, procures, dispenses, or prescribes the drug or drugs described in subsection (c) of this section, or that provides the medical supplies or medical equipment for the execution process; or
- (C) Documents, records, or information that concern the procedures under subdivision (g)(1) of this section and the implementation of the procedures under subdivision (g)(1) of this section.

(2) The following documents, records, and information may be disclosed:

(A) The director may disclose or authorize disclosure of documents, records, and information to his or her subordinates, contractors, or vendors to the extent necessary to carry out his or her duties under this section;

(B) The director may disclose or authorize disclosure of documents, records, and information to the Governor or the Attorney General, or both; and

(C) The Governor or the Attorney General, or both, may disclose or authorize the disclosure of documents, records, and information to their subordinates to the extent necessary to carry out their duties under law.

(3)(A) If any part of this subsection is invalidated by a final and unappealable court order, any unauthorized disclosure of information under this section shall be permitted only after the entry and service of an order prohibiting public disclosure or use of the documents, records, or information and requiring that a public filing of the documents, records, or information be done under seal.

(B) A person who recklessly discloses documents, records, or information in violation of an order under this subdivision (i)(3) upon conviction is guilty of a Class D felony.

(j)(1) The director shall certify under oath that the drug or drugs described in subsection (c) of this section meet the requirements of subsection (d) of this section.

(2) After the certification required under this subsection, a challenge to the conformity of the drug or drugs described under subsection (c) of this section with the requirements of subsection (d) of this section shall be brought only as an original action in the Supreme Court.

(k) The division shall make available to the public any of the following information upon request, so long as the information that may be used to identify an entity or person listed in subsection (i) of this section is redacted and maintained as confidential:

(1) The certification provided for under subsection (j) of this section; and

(2) The division's procedure for administering the drug or drugs described in subsection (c) of this section.

(l) The division shall carry out the sentence of death by electrocution if execution by lethal injection under this section is invalidated by a final and unappealable court order.

(m) Every person that procures, prepares, administers, monitors, or supervises the injection of a drug or drugs under this section has immunity under § 19-10-305.

(n) A person who recklessly discloses documents, records, or information in violation of subdivision (i)(1) of this section upon conviction is guilty of a Class D felony.

5-4-618. Defendants with intellectual disabilities.

(a)(1) As used in this section, "intellectual disabilities" means:

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

(B) A deficit in adaptive behavior.

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

(b) No defendant with intellectual disabilities at the time of committing capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, shall be sentenced to death.

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

(d)(1) A defendant on trial for capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, shall raise the special sentencing provision of intellectual disabilities by motion prior to trial.

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

(B)(i) If the court determines that the defendant does not have an intellectual disability, the defendant may raise the question of an intellectual disability to the jury for determination de novo during the sentencing phase of the trial.

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

(iii) If the jury unanimously determines that the defendant had an intellectual disability at the time of the commission of capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, then the defendant will automatically be sentenced to life imprisonment without possibility of parole.

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

(i) The jury is not "death qualified"; and

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

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

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

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

SECTION 12. Arkansas Code § 5-4-702(a), concerning a sentence enhancement for offenses committed in the presence of a child, is amended to read as follows:

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

(1) Capital murder, § 5-10-101;

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

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

(4) Aggravated robbery, § 5-12-103;

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

(6) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

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

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

SECTION 13. Arkansas Code § 5-10-101(a)(1)(A), concerning capital murder committed while committing certain felony offenses, is amended to read as follows:

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

SECTION 14. Arkansas Code § 5-14-103 is amended to read as follows:
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 subdivision (a)(3) or subdivision (a)(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 under this section 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 orders consistent with § 5-2-327 or § 5-2-328, or both.

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

(f) The offense of rape under this section is a lesser included offense to rape of a child by forcible compulsion, § 5-14-114.

SECTION 15. Arkansas Code Title 5, Chapter 14, Subchapter 1, is amended to add an additional section to read as follows:

5-14-114. Rape of a child by forcible compulsion.

(a) As used in this section, "child" means a person who is less than fourteen (14) years of age.

(b) A person commits rape of a child by forcible compulsion if he or she engages in sexual intercourse or deviate sexual activity with a child by forcible compulsion.

(c)(1) Rape of a child by forcible compulsion is punishable as follows:

(A) If the defendant was eighteen (18) years of age or older at the time he or she committed the rape of a child by forcible compulsion:

(i) Death; or

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

(B) If the defendant was younger than eighteen (18) years of age at the time he or she committed the rape of a child by forcible compulsion, life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment.

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

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

(A) A defendant pleads guilty or nolo contendere to rape of a child by forcible compulsion; or

(B) All of the defendant's appeals have been exhausted and the defendant remains convicted of rape of a child by forcible compulsion.

(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 orders consistent with § 5-2-327 or § 5-2-328, or both.

(e) A person convicted of rape of a child by forcible compulsion is subject to § 9-10-121.

SECTION 16. Arkansas Code § 5-54-105(b)(2), concerning the offense of hindering apprehension or prosecution, is amended to read as follows:

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

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

- 102;
- (B) Murder in the first degree, as prohibited in § 5-10-
 - (C) Kidnapping, as prohibited in § 5-11-102; ~~or~~
 - (D) Rape, as prohibited in § 5-14-103; or
 - (E) Rape of a child by forcible compulsion, § 5-14-114.

SECTION 17. Arkansas Code § 5-73-202(1), concerning the definition of "crime of violence" under the Uniform Machine Gun Act, is amended to read as follows:

(1) "Crime of violence" means any of the following crimes or an attempt to commit any of them:

- (A) Murder;
- (B) Manslaughter;
- (C) Kidnapping;
- (D) Rape;
- (E) Mayhem;
- (F) Assault to do great bodily harm;
- (G) Robbery;
- (H) Burglary;
- (I) Housebreaking;
- (J) Breaking and entering; ~~and~~
- (K) Larceny; and
- (L) Rape of a child by forcible compulsion, § 5-14-114;

SECTION 18. Arkansas Code § 6-17-410(c)(8), concerning teacher licensure and which offenses are disqualifying for licensure if there is a true report in the Child Maltreatment Central Registry or who has been found guilty of the offense, is amended to read as follows:

(8) Rape as prohibited in § 5-14-103 or rape of a child by forcible compulsion as prohibited in § 5-14-114;

SECTION 19. Arkansas Code § 6-17-414(b)(8), concerning teacher licensure and which offenses are disqualifying for licensure if there is a true report in the Child Maltreatment Central Registry or who has been found guilty of the offense, is amended to read as follows:

(8) Rape as prohibited in § 5-14-103 or rape of a child by forcible compulsion as prohibited in § 5-14-114;

SECTION 20. Arkansas Code § 9-10-121 is amended to read as follows:

9-10-121. Termination of certain parental rights for putative fathers convicted of rape.

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

(b) The biological mother of a child conceived as a result of rape may petition the court under § 9-10-104 to reinstate the parental rights of a putative father terminated under subsection (a) of this section.

(c) A putative father to a child conceived as a result of rape shall pay child support as provided under § 9-10-109.

(d) A child conceived as a result of rape is entitled to:

- (1) Child support under § 9-10-109; and
- (2) Inheritance under the Arkansas Inheritance Code of 1969, § 28-9-201 et seq.

SECTION 21. Arkansas Code § 9-27-318(b)(1)(K), concerning the filing of felony offenses committed by a juvenile into circuit court, is amended to read as follows:

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

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

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

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

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

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

- (A) Capital murder, § 5-10-101;
- (B) Murder in the first degree, § 5-10-102;
- (C) Kidnapping, § 5-11-102;
- (D) Aggravated robbery, § 5-12-103;
- (E) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;
- (F) Battery in the first degree, § 5-13-201; or
- (G) Terroristic act, § 5-13-310.

SECTION 23. Arkansas Code § 9-27-356(a), concerning juvenile sex offender assessment and registration, is amended to read as follows:

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

- (1) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;
- (2) Sexual assault in the first degree, § 5-14-124;
- (3) Sexual assault in the second degree, § 5-14-125;
- (4) Incest, § 5-26-202; or
- (5) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303.

SECTION 24. Arkansas Code § 9-27-357(a), concerning delinquent persons who are required to submit a DNA sample, is amended to read as follows:

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

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

SECTION 25. Arkansas Code § 9-28-409(e)(2), concerning disqualifying offenses for a person who undergoes a criminal record and background check under the Child Welfare Agency Licensing Act, is amended to read as follows:

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

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

SECTION 26. Arkansas Code § 11-5-115(a)(1), concerning the elimination of workplace violence and working conditions, is amended to read as follows:

(1) Suffered unlawful violence by an individual as defined by § 5-13-310, terroristic act; § 5-14-103, rape; rape of a child by forcible

compulsion, §§ 5-13-201 – 5-13-203, battery; §§ 5-26-301 – 5-26-309, domestic battering and assault on a family or household member; or a crime of violence as defined by § 5-73-202(1);

SECTION 27. Arkansas Code § 12-12-104(f)(2)(A), concerning the offense of rape and its inclusion in the definition of "sex offense", is amended to read as follows:

(A) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

SECTION 28. Arkansas Code § 12-12-903(13)(A)(i)(a), concerning the offense of rape and its inclusion in the definition of "sex offense" under the Sex Offender Registration Act of 1997, is amended to read as follows:

(a) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

SECTION 29. 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), rape of a child by forcible compulsion, § 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 30. Arkansas Code § 12-29-102(4), concerning the offense for while an inmate will be denied participation in a furlough program, is amended to read as follows:

(4) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

SECTION 31. Arkansas Code § 12-30-404(3), concerning the offense for while an inmate will be denied participation in a work study release program, is amended to read as follows:

(3) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

SECTION 32. Arkansas Code § 13-4-409(c)(1)(D), concerning which items relating to criminal investigations should be retained by a sheriff's office for ninety-nine years, is amended to read as follows:

(D) Rape, § 5-14-103, and rape of a child by forcible compulsion, § 5-14-114;

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

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

(a) The state shall be entitled to ten (10) peremptory challenges in prosecutions for capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, to six (6) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors.

(b) The defendant shall be entitled to twelve (12) peremptory challenges in prosecutions for capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, to eight (8) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors.

SECTION 34. Arkansas Code § 16-42-103(d), concerning the definition of "sexual assault" as it pertains to admissibility of evidence of similar crimes in sexual assault cases, is amended to read as follows:

(d) For purposes of this section, the term "sexual assault" includes the following offenses:

- (1) Rape, § 5-14-103;
- (2) Rape of a child by forcible compulsion, § 5-14-114;
- (3) Sexual assault in the first degree, § 5-14-124; and
- ~~(3)~~(4) Sexual assault in the second degree, § 5-14-125.

SECTION 35. Arkansas Code § 16-87-205(c)(1), concerning the Capital, Conflicts, and Appellate Office, is amended to read as follows:

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

~~(A)(i) In a case involving capital murder cases, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114,~~ in which the death penalty is sought if a conflict of interest is determined by the court to exist between the trial public defender's office and the indigent person or if for any other reason the court determines that the trial public defender cannot or should not represent the indigent person.

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

~~(iii)(B) In a case involving capital murder cases, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114,~~ unless the prosecuting attorney informs the circuit court at the arraignment of the defendant that the death penalty will not be sought, it shall be presumed for purposes of this section that the death penalty will be sought.

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

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

SECTION 36. Arkansas Code § 16-87-212(c), concerning court fees and expenses, is amended to read as follows:

(c) At the discretion of the commission, expenses in a case involving capital murder cases, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, and all proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

SECTION 37. Arkansas Code § 16-87-218(c)(1) and (2), concerning the costs for legal services provided by the Arkansas Public Defender Commission, are amended to read as follows:

(1) Capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, in which the death penalty was given, including any appeal and post-conviction remedy, twelve thousand five hundred dollars (\$12,500);

(2) Capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, in which the death penalty was not given, murder in the first degree, § 5-10-102, or Class Y felony:

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

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

(C) For a trial or an extended matter, seven thousand five hundred dollars (\$7,500);

SECTION 38. Arkansas Code § 16-90-120(e)(1)(A)(iv), concerning the inclusion of the offense of rape as a seventy-percent offense as it pertains to the felony with a firearm sentence enhancement, is amended to read as follows:

(iv) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

SECTION 39. Arkansas Code § 16-90-803(b)(2)(C)(iii)(a), concerning the calculation of prior offenses as it pertains to the voluntary presumptive standards under the sentencing guidelines, is amended to read as follows:

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

(1) Capital murder, § 5-10-101;

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

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

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

(5) Aggravated robbery, § 5-12-103;

(6) Rape, § 5-14-103, or rape of a child by forcible compulsion, § 5-14-114;

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

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

SECTION 40. Arkansas Code § 16-90-803(b)(5), concerning voluntary presumptive standards in sentencing, is amended to read as follows:

(5) Capital murder ~~is~~, § 5-10-101, treason, § 5-51-201, and rape of a child by forcible compulsion, § 5-14-114, are excluded from the sentencing standards and ~~is~~ are subject to the procedures in § 5-4-601 et seq.

SECTION 41. Arkansas Code § 16-91-110(b)(2) and (3), concerning bail bonds, are amended to read as follows:

(2) When a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense of capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

(3) When a criminal defendant has been found guilty, pleaded guilty, or pleaded nolo contendere to a criminal offense of murder in the first degree, § 5-10-102, rape, § 5-14-103, rape of a child by forcible compulsion, § 5-14-114, aggravated robbery, § 5-12-103, aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony, or causing a catastrophe, § 5-38-202(a), or the criminal offense of kidnapping, § 5-11-102, or arson, § 5-38-301, when classified as Class Y felonies, manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401, and is sentenced to death or a term of imprisonment, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

SECTION 42. Arkansas Code § 16-91-202(e)(2)(A), concerning the qualifications of defense counsel in a capital case, is amended to read as follows:

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

SECTION 43. Arkansas Code § 16-93-204(d)(2)(A), concerning executive clemency, is amended to read as follows:

(2)(A) Before considering an application for a pardon or recommending a commutation of sentence of a person who was convicted of capital murder, § 5-10-101, treason, § 5-51-201, rape of a child by forcible compulsion, § 5-14-114, or a Class Y felony, Class A felony, or Class B felony, the board shall notify the victim of the crime or the victim's next of kin, if he or she files a request for notice with the prosecuting attorney.

SECTION 44. Arkansas Code § 16-93-207(d)(1)(B), concerning applications for pardon, commutation of sentence, and remission of fines and forfeitures, is amended to read as follows:

(B) Eight (8) years from the date of the denial if the applicant is serving a sentence of life without parole for capital murder, §

5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114.

SECTION 45. Arkansas Code § 16-93-612(e), concerning the date of an offense and which parole eligibility statute will govern, is amended to add an additional subdivision to read as follows:

(5) If the felony is rape of a child by forcible compulsion, § 5-14-114, and the offense occurred on or after the effective date of this act, § 16-93-623 governs the person's parole eligibility.

SECTION 46. Arkansas Code Title 16, Chapter 93, Subchapter 6, is amended to add an additional section to read as follows:

16-93-623. Parole eligibility – Rape of child by forcible compulsion.

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

(b)(1) If the person who committed rape of a child by forcible compulsion, § 5-14-114, was a minor at the time of the offense the person is eligible for release on parole no later than after thirty (30) years of incarceration, including any applicable sentencing enhancements, and including an instance in which multiple sentences are to be served consecutively or concurrently, unless by law the minor is eligible for earlier parole eligibility.

(2) Credit for meritorious good time shall not be applied to calculations of time served under this subsection for minors convicted and sentenced for rape of a child by forcible compulsion, § 5-14-114.

(3) The calculation of the time periods under this subsection shall include any applicable sentence enhancements to which the minor was sentenced that accompany the sentence for the underlying offense.

(c)(1) The Parole Board shall ensure that a hearing to consider the parole eligibility of a person who was a minor at the time of the offense takes into account how a minor offender is different from an adult offender and provides a person who was a minor at the time of the offense with a meaningful opportunity to be released on parole based on demonstrated maturity and rehabilitation.

(2) During a parole eligibility hearing involving a person who was a minor at the time of the offense, the board shall take into consideration in addition to other factors required by law to be considered by the board:

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

(B) The hallmark features of youth;

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

(D) Age of the person at the time of the offense;

(E) Immaturity of the person at the time of the offense;

(F) The extent of the person's role in the offense and whether and to what extent an adult was involved in the offense;

(G) The person's family and community circumstances at the time of the offense, including any history of abuse, trauma, and involvement in the child welfare system;

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

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

(J) Other factors the board deems relevant.

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

(d)(1)(A) The board shall notify a victim of the offense before the board reviews parole eligibility under this section for an inmate convicted of the offense and provide information regarding victim input meetings, as well as state and national victim resource information.

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

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

(2) Victim notification under this subsection shall include:

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

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

SECTION 47. Arkansas Code § 17-3-102(a)(15), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under professional and occupational licensing, is amended to read as follows:

(15) Rape as prohibited in § 5-14-103 and rape of a child by forcible compulsion as prohibited in § 5-14-114;

SECTION 48. Arkansas Code § 17-3-102(e)(5), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under professional and occupational licensing, is amended to read as follows:

(5) Rape as prohibited in § 5-14-103 and rape of a child by forcible compulsion as prohibited in § 5-14-114;

SECTION 49. Arkansas Code § 17-17-312(f)(15), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under auctioneer licensing, is amended to read as follows:

(15) Rape, as prohibited in § 5-14-103 and rape of a child by forcible compulsion as prohibited in § 5-14-114;

SECTION 50. Arkansas Code § 18-16-112(a)(4), concerning the definition of "sex crime" as it pertains to protection for victims of domestic abuse in landlord tenant law, is amended to add an additional subdivision to read as follows:

(xxiii) Rape of a child by forcible compulsion, § 5-14-114;

SECTION 51. Arkansas Code § 20-13-1106(a)(1)(N), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under emergency medical services licensing, is amended to read as follows:

(N) Rape as prohibited in § 5-14-103 and rape of a child by forcible compulsion as prohibited in § 5-14-114;

SECTION 52. Arkansas Code § 20-16-1305(b), concerning exemptions for medical personnel under the Arkansas Human Heartbeat Protection Act, is amended to read as follows:

(b) This subchapter does not apply to:

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

(2) A pregnancy that results from rape under § 5-14-103, rape of a child by forcible compulsion under § 5-14-114, or incest under § 5-26-202;
or

(3) A medical emergency.

SECTION 53. Arkansas Code § 20-16-1405(a)(3), concerning exemptions under the Pain-Capable Unborn Child Protection Act, is amended to read as follows:

(3) Subdivision (a)(1) of this section does not apply if the pregnancy results from rape under § 5-14-103, rape of a child by forcible compulsion under § 5-14-114, or incest under § 5-26-202.

SECTION 54. Arkansas Code § 20-16-2004(a) and (b), concerning an abortion being limited to 18 weeks' gestation under the Cherish Act, are amended to read as follows:

(a) Except in a medical emergency or if the pregnancy results from a rape under § 5-14-103, rape of a child by forcible compulsion under § 5-14-114, or incest under § 5-26-202, a person shall not perform, induce, or attempt to perform or induce an abortion unless the physician or referring physician has:

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

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

(b) Except in a medical emergency or if the pregnancy results from a rape under § 5-14-103, rape of a child by forcible compulsion under § 5-14-114, or incest under § 5-26-202, a person shall not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being is determined to be greater than eighteen (18) weeks' gestation.

SECTION 55. Arkansas Code § 20-38-105(c)(2)(A)(v), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under health and safety licensing for a medical services provider, is amended to read as follows:

(v) Rape, § 5-14-103, and rape of a child by forcible compulsion under § 5-14-114;

SECTION 56. Arkansas Code § 21-15-102(f)(14), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check for a position involving direct contact with children and persons with mental illness or a developmental disability, is amended to read as follows:

(14) Rape, as prohibited in § 5-14-103, or rape of a child by forcible compulsion, as prohibited by § 5-14-114;

SECTION 57. Arkansas Code § 21-15-102(g)(2)(D), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check for a position involving direct contact with children and persons with mental illness or a developmental disability, is amended to read as follows:

(D) Rape, as prohibited in § 5-14-103, or rape of a child by forcible compulsion, as prohibited by § 5-14-114;

SECTION 58. Arkansas Code § 21-15-103(g)(14), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check for a designated position in a state agency, is amended to read as follows:

(14) Rape, as prohibited in § 5-14-103, or rape of a child by forcible compulsion, as prohibited by § 5-14-114;

SECTION 59. Arkansas Code § 21-15-103(h)(2)(D), concerning the inclusion of rape as an offense whose expungement shall not be considered a conviction for the purposes of a background check for a designated position in a state agency, is amended to read as follows:

(D) Rape, as prohibited in § 5-14-103, or rape of a child by forcible compulsion, as prohibited by § 5-14-114;

SECTION 60. Arkansas Code § 21-15-104(c)(5), concerning the inclusion of rape as an offense that may not be waived for the purposes of a background check by the director of a state agency, is amended to read as follows:

(5) Rape, § 5-14-103, and rape of a child by forcible compulsion, § 5-14-114;"

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator T. Garner
BPG/BPG - 01-11-2021 14:21:50
BPG146

Secretary