



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for HB1789  
Sponsored by Representative Penzo**

**Subtitle** TO AMEND THE LAW CONCERNING THE OFFENSE OF TRAFFICKING; TO CREATE AN OFFENSE FOR THE UNLAWFUL SOLICITATION FOR THE RELINQUISHMENT OF PARENTAL RIGHTS; TO AMEND THE LAW CONCERNING ADOPTIONS; AND TO DECLARE AN EMERGENCY.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from current law**<sup>2</sup> The proposed bill amends multiple provisions of the Arkansas Code Annotated. This impact assessment addresses only the criminal provisions in the proposed bill.

Section 1. Amends A.C.A. § 5-18-103, Trafficking of persons, to add new courses of conduct by which a person can commit the offense of trafficking of persons. Under the proposed bill, a person commits the offense of trafficking of persons if he or she knowingly recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a pregnant woman for the purpose of causing the pregnant woman by the use of or threatened use of physical force to place the baby who is not yet born for adoption, or benefits financially or benefits by receiving anything of value from participating in the use or threatened use of physical force to place a baby who is not yet born for adoption. The proposed bill does not make any changes to existing courses of conduct. Trafficking of persons under current law, as well as the proposed bill, is a Class Y felony if the victim was a minor at the time of the offense, or a Class A felony if otherwise committed.

Section 2. Creates A.C.A. § 5-26-204, Unlawful solicitation for the relinquishment of parental rights. Under the proposed bill, a person commits the offense of unlawful solicitation for the relinquishment of parental rights as follows:

- First degree: If, in exchange for consenting to the person or another person placing a baby who is not yet born for adoption, the person offers anything of value to the (A) biological mother of the baby who is not yet born; (B) biological or putative father of the baby who is not yet born; (C) spouse, partner, or other relative of the biological mother of the baby who is not yet born; or (D) spouse, partner, or other relative of the biological or putative father of the baby who is not yet born.
  - Unlawful solicitation for the relinquishment of parental rights in the first degree is:
    - Class A felony if the person uses duress, coercion, undue influence, intimidation, a threat, fraud, or physical force to influence the victim to allow the person or another person to place the baby who is not yet born for adoption, or
    - Class C felony if otherwise committed.

<sup>1</sup> This impact assessment was prepared (3/26/2019, 11:20 a.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.

<sup>2</sup> Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

- Second degree: If, in exchange for consenting to the person adopting a baby who is not yet born the person offers anything of value to the: (A) biological mother of the baby who is not yet born; (B) biological or putative father of the baby who is not yet born; (C) spouse, partner, or other relative of the biological mother of the baby who is not yet born; or (D) spouse, partner, or other relative of the biological or putative father of the baby who is not yet born.
  - Unlawful solicitation for the relinquishment of parental rights in the second degree is:
    - Class D felony if the person uses duress, coercion, undue influence, intimidation, a threat, fraud, or physical force to influence the victim to consent to the person or another person adopting the baby who is not yet born, or
    - Class A misdemeanor if otherwise committed.

Section 3. Amends A.C.A. § 9-9-206, Compensation for adoption, by creating two new criminal penalties, amending the elements of the existing criminal penalty, and amending the definition of unlawful compensation.

Under current law, a parent or guardian who *unlawfully* accepts compensation or any other thing of value as consideration for the relinquishment of a minor is guilty of a Class C felony. Under the proposed bill, the parent or guardian is guilty of a Class C felony if he or she *purposely* accepts compensation or any other thing of value *that he or she knows to be unlawful* as consideration for the relinquishment of a minor. [*Italics indicate changes.*]

Under the proposed bill, a person **other than** an attorney, a doctor, an employee of a licensed placement agency acting within the scope of his or her employment, or a petitioner who purposely transfers to a parent or guardian unlawful compensation or any other thing of value as consideration for the relinquishment of a minor or baby who is not yet born is guilty of a Class C felony. A petitioner who purposely transfers to a parent or guardian unlawful compensation or any other thing of value as consideration for the relinquishment of a minor or unborn child is guilty of a Class A misdemeanor.

Unlawful compensation, as described in A.C.A. § 9-9-206 (c), is significantly amended under this section of this proposed bill. The primary changes are:

- Allowable expenses may be reimbursed if the expense is budgeted or soon to be incurred under the proposed bill. Under current law, expenses may only be reimbursed when actually incurred.
- Payments for general maintenance are unlawful under the proposed bill. However, monies paid directly to a landlord, mortgage, automobile lender, repairman, mechanic, insurance company, utility, retailer, attorney, or healthcare provider are lawful under the proposed bill so long as they are reasonably related to the pregnancy or adoption.

### **Impact Information**

This proposed bill creates new courses of conduct by which A.C.A. § 5-18-103, Trafficking of persons, can be committed, creates new criminal offenses for the unlawful solicitation for the relinquishment of parental rights [to be codified at A.C.A. § 5-26-204], and creates new courses of conduct by which a violation of A.C.A. § 9-9-206, Compensation for adoption, can be committed. Due to the length of available sentences, the proposed bill has the potential to impact correctional resources, even with a relatively small number of convictions. Because data does not exist as to the likely number of occurrences of the felony offenses proposed by this bill, the impact cannot be determined. The table on the following page details the penalty ranges for the offenses created by the proposed bill.

A.C.A. Code	Offense Title	Classification	Statutory Range
§ 5-18-103 (a)(6) & (c)(1)	Recruiting, enticing, etc. a pregnant woman to place a baby who is not yet born for adoption	Class A felony	6-30 years
§ 5-18-103 (a)(6) & (c)(2)	Recruiting, enticing, etc. a pregnant woman to place a baby who is not yet born for adoption - Victim is a minor	Class Y felony	10-40 years or life <b>70% TE*</b>
§ 5-18-103 (a)(7) & (c)(1)	Benefitting from recruiting, enticing, etc. a pregnant woman to place a baby who is not yet born for adoption	Class A felony	6-30 years
§ 5-18-103 (a)(7) & (c)(2)	Benefitting from recruiting, enticing, etc. a pregnant woman to place a baby who is not yet born for adoption - Victim is a minor	Class Y felony	10-40 years or life <b>70% TE*</b>
§ 5-26-204 (a)(2)(A)	Unlawful Solicitation for the relinquishment of parental rights in the first degree - use of duress, coercion, undue influence, etc.	Class A felony	6-30 years
§ 5-26-204 (a)(2)(B)	Unlawful Solicitation for the relinquishment of parental rights in the first degree	Class C felony	3-10 years
§ 5-26-204 (b)(2)(A)	Unlawful Solicitation for the relinquishment of parental rights in the second degree - use of duress, coercion, undue influence, etc.	Class D felony	0-6 years
§ 5-26-204 (b)(2)(B)	Unlawful Solicitation for the relinquishment of parental rights in the second degree	Class A misdemeanor	Up to 1 year
§ 9-9-206 (c)(3)	Compensating a parent or guardian for relinquishment of parental rights	Class C felony	3-10 years
§ 9-9-206 (c)(4)	Compensating a parent or guardian for relinquishment of parental rights by petitioner	Class A misdemeanor	Up to 1 year

\* 70% TE means an offender must serve 70% of his or her sentence before becoming eligible for transfer to community supervision.

The following numbers are provided for informational purposes only. The Arkansas Department of Correction (ADC) reports that there are currently four (4) inmates serving a term of incarceration for A.C.A § 5-18-103, Trafficking of persons, Class Y felony. All four (4) of these inmates are serving a term of incarceration for which A.C.A § 5-18-103, Trafficking of persons, Class Y felony, is the primary offense. ADC reports that there are currently two (2) inmates serving a term of incarceration for A.C.A § 5-18-103, Trafficking of persons, Class A felony. Both of these inmates are serving a term of incarceration for which A.C.A § 5-18-103, Trafficking of persons, Class A felony, is the primary offense. Please note that these inmates include all those serving a term of incarceration for A.C.A. § 5-18-103 and do not distinguish between the various courses of conduct by which a person can commit the offense under current law.

**A.C.A § 5-18-103. Trafficking of persons.**

- (a) A person commits the offense of trafficking of persons if he or she knowingly:
- (1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;
  - (2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;
  - (3) Subjects a person to involuntary servitude;
  - (4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity; or
  - (5) Sells or offers to sell travel services that he or she knows includes an activity prohibited under subdivisions (a)(1)-(4) of this section.
- (b) It is not a defense to prosecution under subdivision (a)(4) of this section that the actor:
- (1) Did not have knowledge of a victim's age; or
  - (2) Mistakenly believed a victim was not a minor.
- (c)
- (1) Trafficking of persons is a Class A felony.
  - (2) Trafficking of persons is a Class Y felony if a victim was a minor at the time of the offense.
- (d) In addition to any other sentence authorized by this section, a person who violates this section by offering to pay, agreeing to pay, or paying a fee to engage in sexual activity upon conviction shall be ordered to pay a fine of two hundred fifty dollars (\$250) to be deposited into the Safe Harbor Fund for Sexually Exploited Children.

History: Acts 2013, No. 132, § 3; 2013, No. 133, § 3; 2013, No. 1257, § 4; 2015, No. 1080, § 1.

**A.C.A § 16-93-618. Parole eligibility -- Certain Class Y felony offenses and certain methamphetamine offenses -- Seventy-percent crimes.**

- (a) (1) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, a person who is found guilty of or pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(I) of this section shall not be eligible for parole or community correction transfer, except as provided in subdivision (a)(3) or subsection (c) of this section, until the person serves seventy percent (70%) of the term of imprisonment to which the person is sentenced, including a sentence prescribed under § 5-4-501:
- (A) Murder in the first degree, § 5-10-102;
  - (B) Kidnapping, Class Y felony, § 5-11-102;
  - (C) Aggravated robbery, § 5-12-103;
  - (D) Rape, § 5-14-103;
  - (E) Trafficking of persons, Class Y felony, § 5-18-103;
  - (F) Causing a catastrophe, § 5-38-202(a);
  - (G) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;
  - (H) Trafficking methamphetamine, § 5-64-440(b)(1); or
  - (I) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).
- (2)
- (A) The seventy-percent provision of subdivision (a)(1) of this section has no application to any person who is found guilty of or pleads guilty or nolo contendere to kidnapping, Class B felony, § 5-11-102, regardless of the date of the offense.
  - (B) The provisions of this section shall apply retroactively to all persons presently serving a sentence for kidnapping, Class B felony, § 5-11-102.
- (3) (A) (i) Regardless of the date of the offense, the seventy-percent provision under subdivision (a)(1) of this section shall include credit for the award of meritorious good time under § 12-29-201 to any person who is found guilty of or pleads guilty or nolo contendere to:
- (a) Manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401;
  - (b) Trafficking methamphetamine, § 5-64-440(b)(1); or
  - (c) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).

(ii) Regardless of the date of the offense and unless the person is sentenced to a term of life imprisonment, the seventy-percent provision under subdivision (a)(1) of this section may include credit for the award of meritorious good time under § 12-29-202 to any person who is found guilty of or pleads guilty or nolo contendere to:

- (a) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;
- (b) Trafficking methamphetamine, § 5-64-440(b)(1); or
- (c) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).

(B) In no event shall the time served by any person who is found guilty of or pleads guilty or nolo contendere to manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401, trafficking methamphetamine, § 5-64-440(b)(1), or possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443(a)(2), be reduced to less than fifty percent (50%) of the person's original sentence.

(4)

(A) When any person sentenced under subdivision (a)(3) of this section becomes eligible for parole, the Department of Community Correction shall send a notice of the parole hearing to the prosecuting attorney of the judicial district or districts in which the person was found guilty or pleaded guilty or nolo contendere to an offense listed in subdivision (a)(1) of this section.

(B) The notice shall contain the following language in 12-point capital letters, bold type: "INMATE SENTENCED UNDER ARKANSAS CODE § 16-93-618".

(b) A jury may be instructed under § 16-97-103 regarding the awarding of meritorious good time under subdivision (a)(3) of this section.

(c) The sentencing judge, in his or her discretion, may waive subsection (a) of this section under the following circumstances:

- (1) The defendant was a juvenile at the time of the offense;
- (2) The juvenile was merely an accomplice to the offense; and
- (3) The offense occurred on or after July 28, 1995.

(d) The awarding of meritorious good time under § 12-29-201 or § 12-29-202 does not apply to persons sentenced under subdivisions (a)(1)(A)-(E) of this section.

(e) A person who commits the offense of possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, after July 27, 2011, shall not be subject to the provisions of this section.

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

History: Acts 2011, No. 570, § 103; 2013, No. 132, § 7; 2013, No. 133, § 7; 2013, No. 1335, § 4; 2017, No. 539, § 12; 2017, No. 1029, § 3.