

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1635

5 By: Representatives Petty, Dotson
6

For An Act To Be Entitled

8 AN ACT CONCERNING AN INCREASE IN THE SENTENCING RANGE
9 FOR REPEAT FELONY SEX OFFENDERS; CONCERNING SEX
10 OFFENDER REGISTRATION REQUIREMENTS; CONCERNING SEX
11 OFFENSES AND SEX OFFENDERS; AND FOR OTHER PURPOSES.
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Subtitle

14 CONCERNING AN INCREASE IN THE SENTENCING
15 RANGE FOR REPEAT FELONY SEX OFFENDERS;
16 CONCERNING SEX OFFENDER REGISTRATION
17 REQUIREMENTS; AND CONCERNING SEX OFFENSES
18 AND SEX OFFENDERS.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 5-4-501(a), concerning sentencing for a
25 felony when the person is a habitual offender, is amended to read as follows:

26 (a)(1) A defendant meeting the following criteria may be sentenced to
27 pay any fine authorized by law for the felony conviction and to an extended
28 term of imprisonment as set forth in subdivision (a)(2) of this section:

29 (A) A defendant who:

30 (i) Is convicted of a felony other than those
31 enumerated in subsections (c) and (d) of this section committed after June
32 30, 1993; and

33 (ii) Has previously been convicted of more than one
34 (1) felony but fewer than four (4) felonies or who has been found guilty of
35 more than one (1) but fewer than four (4) felonies;

36 (B) A defendant who:



1 (i) Is convicted of any felony enumerated in
 2 subsection (c) of this section committed after August 31, 1997; and

3 (ii) Has previously been convicted of more than one
 4 (1) felony but fewer than four (4) felonies not enumerated in subsection (c)
 5 of this section or who has been found guilty of more than one (1) but fewer
 6 than four (4) felonies not enumerated in subsection (c) of this section; ~~or~~

7 (C) A defendant who:

8 (i) Is convicted of any felony enumerated in
 9 subsection (d) of this section committed after August 31, 1997; and

10 (ii) Has previously been convicted of more than one
 11 (1) felony but fewer than four (4) felonies not enumerated in subsection (d)
 12 of this section or has been found guilty of more than one (1) but fewer than
 13 four (4) felonies not enumerated in subsection (d) of this section;

14 (D) A defendant who is convicted of a Class A felony,
 15 Class B felony, Class C felony, or Class D felony for which he or she is
 16 required to register as a sex offender under the Sex Offender Registration
 17 Act, § 12-12-901 et seq., and has been found guilty of more than one (1)
 18 felony that would require a person to register as a sex offender under the
 19 Sex Offender Registration Act, § 12-12-901 et seq.; or

20 (E) A defendant who is convicted of a Class Y felony for
 21 which he or she is required to register as a sex offender under the Sex
 22 Offender Registration Act, § 12-12-901 et seq., and has been found guilty of
 23 more than one (1) felony that would require a person to register as a sex
 24 offender under the Sex Offender Registration Act, § 12-12-901 et seq.

25 (2) The extended term of imprisonment for a defendant described
 26 in ~~subdivision (a)-(1)~~ subdivisions (a)(1)(A)-(C) of this section is as
 27 follows:

28 (A) For a conviction of a Class Y felony, a term of
 29 imprisonment of not less than ten (10) years nor more than sixty (60) years,
 30 or life;

31 (B) For a conviction of a Class A felony, a term of
 32 imprisonment of not less than six (6) years nor more than fifty (50) years;

33 (C) For a conviction of a Class B felony, a term of
 34 imprisonment of not less than five (5) years nor more than thirty (30) years;

35 (D) For a conviction of a Class C felony, a term of
 36 imprisonment of not less than three (3) years nor more than twenty (20)

1 years;

2 (E) For a conviction of a Class D felony, a term of
3 imprisonment of not more than twelve (12) years;

4 (F) For a conviction of an unclassified felony punishable
5 by less than life imprisonment, a term of imprisonment not more than five (5)
6 years more than the maximum sentence for the unclassified felony; and

7 (G) For a conviction of an unclassified felony punishable
8 by life imprisonment, a term of imprisonment not less than ten (10) years nor
9 more than fifty (50) years, or life.

10 (3) Unless the defendant is liable for a longer term of
11 imprisonment under subdivisions (a)(2)(A)-(C) of this section, the extended
12 term of imprisonment for a defendant described under subdivision (a)(1)(D) of
13 this section is the term of years designated for an offense one (1)
14 classification higher than the offense for which he or she was convicted.

15 (4) The extended term of imprisonment for a defendant described
16 under subdivision (a)(1)(E) of this section is not less than fifteen (15)
17 years nor more than sixty (60) years, or life.

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19 SECTION 2. Arkansas Code § 5-4-501(b), concerning sentencing for a
20 felony when the person is a habitual offender, is amended to read as follows:

21 (b)(1) A defendant meeting the following criteria may be sentenced to
22 pay any fine authorized by law for the felony conviction and to an extended
23 term of imprisonment as set forth in subdivision (b)(2) of this section:

24 (A) A defendant who:

25 (i) Is convicted of a felony other than a felony
26 enumerated in subsections (c) and (d) of this section committed after June
27 30, 1993; and

28 (ii) Has previously been convicted of four (4) or
29 more felonies or who has been found guilty of four (4) or more felonies;

30 (B) A defendant who:

31 (i) Is convicted of any felony enumerated in
32 subsection (c) of this section committed after June 30, 1997; and

33 (ii) Has previously been convicted of four (4) or
34 more felonies not enumerated in subsection (c) of this section or who has
35 been found guilty of four (4) or more felonies not enumerated in subsection
36 (c) of this section; ~~or~~

1 (C) A defendant who:

2 (i) Is convicted of any felony enumerated in
 3 subsection (d) of this section committed after June 30, 1997; and

4 (ii) Has previously been convicted of four (4) or
 5 more felonies not enumerated in subsection (d) of this section or who has
 6 been found guilty of four (4) or more felonies not enumerated in subsection
 7 (d) of this section;

8 (D) A defendant who is convicted of a Class A felony,
 9 Class B felony, Class C felony, or Class D felony for which he or she is
 10 required to register as a sex offender under the Sex Offender Registration
 11 Act, § 12-12-901 et seq., and has been found guilty of more than one (1)
 12 felony that would require a person to register as a sex offender under the
 13 Sex Offender Registration Act, § 12-12-901 et seq.; or

14 (E) A defendant who is convicted of a Class Y felony for
 15 which he or she is required to register as a sex offender under the Sex
 16 Offender Registration Act, § 12-12-901 et seq., and has been found guilty of
 17 more than one (1) felony that would require a person to register as a sex
 18 offender under the Sex Offender Registration Act, § 12-12-901 et seq.

19 (2) The extended term of imprisonment for a defendant described
 20 in ~~subdivision (b)(1)~~ subdivisions (b)(1)(A)-(C) of this section is as
 21 follows:

22 (A) For a conviction of a Class Y felony, a term of
 23 imprisonment of not less than ten (10) years nor more than life;

24 (B) For a conviction of a Class A felony, a term of
 25 imprisonment of not less than six (6) years nor more than sixty (60) years;

26 (C) For a conviction of a Class B felony, a term of
 27 imprisonment of not less than five (5) years nor more than forty (40) years;

28 (D) For a conviction of a Class C felony, a term of
 29 imprisonment of not less than three (3) years nor more than thirty (30)
 30 years;

31 (E) For a conviction of a Class D felony, a term of
 32 imprisonment of not more than fifteen (15) years;

33 (F) For a conviction of an unclassified felony punishable
 34 by less than life imprisonment, a term of imprisonment not more than two (2)
 35 times the maximum sentence for the unclassified felony offense; and

36 (G) For a conviction of an unclassified felony punishable

1 by life imprisonment, a term of imprisonment not less than ten (10) years nor
2 more than fifty (50) years, or life.

3 (3) Unless the defendant is liable for a longer term of
4 imprisonment under subdivisions (b)(2)(A)-(C) of this section, the extended
5 term of imprisonment for a defendant described under subdivision (b)(2)(D) of
6 this section is the term of years designated for an offense one (1)
7 classification higher than the offense for which he or she was convicted.

8 (4) The extended term of imprisonment for a defendant described
9 under subdivision (b)(1)(E) of this section is not less than fifteen (15)
10 years nor more than sixty (60) years, or life.

11
12 SECTION 3. Arkansas Code § 5-4-501, concerning habitual offender
13 sentences, is amended to add an additional subsection to read as follows:

14 (i) A person classified as a habitual offender under subsection (a) or
15 subsection (b) of this section who committed an offense of rape in which the
16 victim was less than fourteen (14) years of age shall be sentenced to a
17 minimum term of imprisonment of thirty (30) years.

18
19 SECTION 4. Arkansas Code § 5-14-124(a), concerning the elements of the
20 offense of sexual assault in the first degree, is amended to read as follows:

21 (a) A person commits sexual assault in the first degree if:

22 (1) The person engages in sexual intercourse or deviate sexual
23 activity with a minor who is not the actor's spouse and the actor is:

24 (A) Employed with the Department of Correction, the
25 Department of Community Correction, the Department of Human Services, or any
26 city or county jail or a juvenile detention facility, and the victim is in
27 the custody of the Department of Correction, the Department of Community
28 Correction, the Department of Human Services, any city or county jail or
29 juvenile detention facility, or their contractors or agents;

30 (B) Employed by or contracted with the Department of
31 Community Correction, a local law enforcement agency, a court, or a local
32 government and the actor is supervising the minor while the minor is on
33 probation or parole or for any other court-ordered reason;

34 (C) A mandated reporter under § 12-18-402(b) and is in a
35 position of trust or authority over the victim ~~and uses the position of trust~~
36 ~~or authority to engage in sexual intercourse or deviate sexual activity;~~ or

1 (D) An employee in the victim's school or school district,
 2 a temporary caretaker, or a person in a position of trust or authority over
 3 the victim; or

4 (2) The person is a teacher, principal, athletic coach, or
 5 counselor in a public or private school in kindergarten through grade twelve
 6 (K-12) and the actor:

7 (A) Engages in sexual intercourse or deviate sexual
 8 activity with a person who is not the actor's spouse and the victim is:

9 (i) Less than twenty-one (21) years of age; and

10 (ii) A student enrolled in the public or private
 11 school employing the actor; and

12 (B) Is in a position of trust or authority over the victim
 13 and uses his or her position of trust or authority over the victim to engage
 14 in sexual intercourse or deviate sexual activity.

15
 16 SECTION 5. Arkansas Code § 5-14-128(d), concerning the penalty for a
 17 registered sex offender living too close to a school, public park, youth
 18 center, daycare, or church or other place of worship, is amended to read as
 19 follows:

20 (d)(1) A violation of this section is a Class ~~D~~(C) felony.

21 (2) However, if a person has a prior conviction under this
 22 section or a prior conviction for an offense substantially similar to the
 23 offense under this section from another jurisdiction, the person upon
 24 conviction is guilty of a Class B felony.

25
 26 SECTION 6. Arkansas Code § 12-12-904 is amended to read as follows:

27 12-12-904. Failure or refusal to comply with registration and
 28 reporting requirements ~~—Refusal to~~ or to cooperate with assessment process.

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

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

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

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

36 ~~(iv) Files false paperwork or documentation~~

1 ~~regarding verification, change of information, or petitions to be removed~~
 2 ~~from the registry.~~

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

7 (a) A person commits failure to comply with registration and reporting
 8 requirements or to cooperate with the assessment process under this
 9 subchapter if the person knowingly:

10 (1) Fails to:

11 (A) Register or verify registration as required by this
 12 subchapter; or

13 (B) Report in person a change of address, employment,
 14 education, or training as required by this subchapter;

15 (2) Refuses to cooperate with the assessment process as required
 16 by this subchapter;

17 (3) Files false paperwork or documentation:

18 (A) Regarding verification of registration or a change of
 19 information regarding registration; or

20 (B) As part of a petition to be removed from the sex
 21 offender registry; or

22 (4) Fails or refuses to provide any information necessary to
 23 update his or her registration file as required by § 12-12-906(b)(2).

24 ~~(ii)(b)~~ If a sex offender fails or refuses to provide any information
 25 necessary to update his or her registration file as required by § 12-12-
 26 906(b)(2), as soon as administratively feasible the Department of Correction,
 27 the Department of Community Correction, the Arkansas State Hospital, or the
 28 Department of Human Services shall contact the local law enforcement agency
 29 having jurisdiction to report the violation of ~~subdivision (a)(1)(B)(i) of~~
 30 this section.

31 (c)(1) Failure to comply with registration and reporting requirements
 32 or to cooperate with the assessment process is a Class C felony.

33 (2) A second or subsequent offense of failure to comply with
 34 registration and reporting requirements or to cooperate with the assessment
 35 process is a Class B felony.

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

1 ~~(A)~~(1) Delayed reporting a change in address because of:

2 ~~(i)~~(A) An eviction;

3 ~~(ii)~~(B) A natural disaster; or

4 ~~(iii)~~(C) Any other unforeseen circumstance; and

5 ~~(B)~~(2) Provided the new address to the local law enforcement
6 agency having jurisdiction in person no later than five (5) business days
7 after the person establishes residency.

8 ~~(b)~~(e) Any agency or official subject to reporting requirements under
9 this subchapter that knowingly fails to comply with the reporting
10 requirements under this subchapter upon conviction is guilty of a Class B
11 misdemeanor.

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