



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1453
Sponsored by Representative Farrer**

Subtitle PROHIBITING IMPROPER SEXUAL CONDUCT BETWEEN A PROBATION OR PAROLE OFFICER AND A PERSON BEING SUPERVISED ON PROBATION, PAROLE, OR OTHER COURT-ORDERED REASON.

Impact Summary¹ Cannot be determined.

Change from current law² Amends several provisions in Title 5, Chapter 14 of Arkansas Code Annotated.

The proposed bill adds a new course of conduct by which a person can commit the offense of sexual indecency with a child, Arkansas Code Annotated § 5-14-110(a)(4). Under the proposed bill, a person commits sexual indecency with a child if, with the purpose to gratify his or her sexual desire or a sexual desire of another person, the person, being eighteen (18) years of age or older, causes or coerces a minor to expose his or her sex organs to the actor or another person, and the actor is employed by or contracted with the Department of Community Correction, a local law enforcement agency, a court, or a local government and the actor is supervising the minor while the minor is on probation or parole or for any other court-ordered reason. Sexual indecency with a child is a Class D felony. Under current law, there are additional actors who can be charged with this offense. For a complete list of these actors, please see the attached code provision.

The proposed bill adds a new course of conduct by which a person can commit the offense of sexual assault in the first degree, A.C.A. § 5-14-124(a)(1). Under the proposed bill, a person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor’s spouse and the actor is employed by or contracted with the Department of Community Correction, a local law enforcement agency, a court, or a local government and the actor is supervising the minor while the minor is on probation or parole or for any other court-ordered reason. Sexual assault in the first degree is a Class A felony. Under current law, there are additional actors who can be charged with this offense. For a complete list of these actors, please see the attached code provision.

¹ This impact assessment was prepared (2/16/2017, 8:07 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.

² Standard punishment ranges:

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

The proposed bill adds a new course of conduct by which a person can commit the offense of sexual assault in the second degree, A.C.A. § 5-14-125(a)(4). Under the proposed bill, a person commits sexual assault in the second degree if the person engages in sexual contact with a minor and the actor is employed by or contracted with the Department of Community Correction, a local law enforcement agency, a court, or a local government and the actor is supervising the minor while the minor is on probation or parole or for any other court-ordered reason. Sexual assault in the second degree is a Class B felony. Under current law, there are additional actors who can be charged with this offense. For a complete list of these actors, please see the attached code provision.

The proposed bill adds a new course of conduct by which a person can commit the offense of sexual assault in the third degree, A.C.A. § 5-14-126(a)(1). Under the proposed bill, a person commits sexual assault in the third degree if the person engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse and the actor is employed by or contracted with the Department of Community Correction, a local law enforcement agency, a court, or a local government and the actor is supervising the person while the person is on probation or parole or for any other court-ordered reason. Sexual assault in the third degree is a Class C felony. Under current law, there are additional actors who can be charged with this offense. For a complete list of these actors, please see the attached code provision.

Impact Information

Because the proposed bill creates a new course of conduct by which the affected felonies can be committed, this impact cannot be determined. Some conduct covered under the proposed bill is potentially already criminalized under existing law (see highlighted sections in attached code provisions). The following data is provided for informational purposes only.

According to the Arkansas Department of Correction, as of February 7, 2017, there are 220 inmates serving a sentence for A.C.A. § 5-14-110, Sexual indecency with a child, Class D felony, as currently written. There are 231 inmates serving a sentence for A.C.A. § 5-14-124, Sexual assault in the first degree, Class A felony, as currently written. There are 1,102 inmates serving a sentence for A.C.A. § 5-14-125, Sexual assault in the second degree, Class B felony, as currently written. There are 13 inmates serving a sentence for A.C.A. § 5-14-126, Sexual assault in the third degree, Class C felony, as currently written.

A.C.A. § 5-14-110. Sexual indecency with a child.

(a) A person commits sexual indecency with a child if:

(1) Being eighteen (18) years of age or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:

- (A) Sexual intercourse;
- (B) Deviate sexual activity; or
- (C) Sexual contact;

(2) (A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim;

(3) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to a minor, and the actor is:

(A) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(C) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust and authority over the minor;

(4) With the purpose to arouse or gratify his or her sexual desire or a sexual desire of another person, the person, being eighteen (18) years of age or older, causes or coerces a minor to expose his or her sex organs to the actor or another person, and the actor is:

(A) Employed with the Department of Correction, the Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(C) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor; or

(5) Being eighteen (18) years of age or older, the person causes or coerces another person who is less than fourteen (14) years of age to expose his or her sex organs or the breast of a female with the purpose to arouse or gratify a sexual desire of the actor or another person.

(b) Sexual indecency with a child is a Class D felony.

HISTORY: Acts 1975, No. 280, § 1810; A.S.A. 1947, § 41-1810; Acts 1995, No. 550, § 1; 2001, No. 1821, § 1; 2005, No. 1993, § 1; 2007, No. 531, § 1; 2009, No. 748, § 9; 2009, No. 758, § 1; 2016 (3rd Ex. Sess.), No. 18, § 1; 2016 (3rd Ex. Sess.), No. 19, § 1.

A.C.A. § 5-14-124. Sexual assault in the first degree.

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

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

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

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

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

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

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

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

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

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

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c) It is an affirmative defense to a prosecution under subdivision (a)(1)(C) of this section that the actor was not more than three (3) years older than the victim.

(d) Sexual assault in the first degree is a Class A felony.

HISTORY: Acts 2001, No. 1738, § 2; 2003, No. 1391, § 1; 2003, No. 1469, § 2; 2009, No. 748, § 10; 2009, No. 758, § 2; 2013, No. 1044, § 1.

A.C.A. § 5-14-125. Sexual assault in the second degree.

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

- (1) Engages in sexual contact with another person by forcible compulsion;
- (2) Engages in sexual contact with another person who is incapable of consent because he or she is:
 - (A) Physically helpless;
 - (B) Mentally defective; or
 - (C) Mentally incapacitated;
- (3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is:
 - (A) Less than fourteen (14) years of age; and
 - (B) Not the person's spouse;

(4) (A) Engages in sexual contact with a minor and the actor is:

- (i) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;
- (ii) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or
- (iii) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.

(B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution;

(5) (A) Being a minor, engages in sexual contact with another person who is:

- (i) Less than fourteen (14) years of age; and
- (ii) Not the person's spouse.

(B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:

- (i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or
- (ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older; or

(6) Is a teacher, principal, athletic coach, or counselor in a public or private school in a grade kindergarten through twelve (K-12), in a position of trust or authority, and uses his or her position of trust or authority over the victim to engage in sexual contact with a victim who is:

- (A) A student enrolled in the public or private school; and
- (B) Less than twenty-one (21) years of age.

(b) (1) Sexual assault in the second degree is a Class B felony.

(2) Sexual assault in the second degree is a Class D felony if committed by a minor with another person who is:

- (A) Less than fourteen (14) years of age; and
- (B) Not the person's spouse.

HISTORY: Acts 2001, No. 1738, § 3; 2003, No. 1323, § 1; 2003, No. 1720, § 2; 2009, No. 748, §§ 11-13; 2009, No. 758, § 3; 2011, No. 1129, § 1; 2013, No. 1086, § 2.

A.C.A. § 5-14-126. Sexual assault in the third degree.

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

(1) Engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is:

(A) Employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail;

(B) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or

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

(2) (A) Being a minor, engages in sexual intercourse or deviate sexual activity with another person who is:

(i) Less than fourteen (14) years of age; and

(ii) Not the person's spouse.

(B) It is an affirmative defense under this subdivision (a)(2) that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c) Sexual assault in the third degree is a Class C felony.

HISTORY: Acts 2001, No. 1738, § 4; 2003, No. 1324, § 1; 2007, No. 363, § 1; 2009, No. 748, § 14; 2009, No. 758, § 4.

A.C.A. § 12-18-402. Mandated reporters -- Definition.

(a) An individual listed as a mandated reporter under subsection (b) of this section shall immediately notify the Child Abuse Hotline if he or she:

- (1) Has reasonable cause to suspect that a child has:
 - (A) Been subjected to child maltreatment;
 - (B) Died as a result of child maltreatment; or
 - (C) (i) Died suddenly and unexpectedly.
 - (ii) As used in subdivision (a)(1)(C)(i) of this section, "died suddenly and unexpectedly" means a child death that was not caused by a known disease or illness for which the child was under a physician's care at the time of death, including without limitation child deaths as a result of the following:
 - (a) Sudden infant death syndrome;
 - (b) Sudden unexplained infant death;
 - (c) An accident;
 - (d) A suicide;
 - (e) A homicide; or
 - (f) Other undetermined circumstance; or
- (2) Observes a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.

(b) The following individuals are mandated reporters under this chapter:

- (1) A child care worker or foster care worker;
- (2) A coroner;
- (3) A day care center worker;
- (4) A dentist;
- (5) A dental hygienist;
- (6) A domestic abuse advocate;
- (7) A domestic violence shelter employee;
- (8) A domestic violence shelter volunteer;
- (9) An employee of the Department of Human Services;
- (10) An employee working under contract for the Division of Youth Services of the Department of Human Services;
- (11) A foster parent;
- (12) A judge;
- (13) A law enforcement official;**
- (14) A licensed nurse;
- (15) Medical personnel who may be engaged in the admission, examination, care, or treatment of persons;
- (16) A mental health professional or paraprofessional;
- (17) An osteopath;
- (18) A peace officer;
- (19) A physician;
- (20) A prosecuting attorney;
- (21) A resident intern;
- (22) A public or private school counselor;
- (23) A school official, including without limitation institutions of higher education;
- (24) A social worker;
- (25) A surgeon;
- (26) A teacher;
- (27) A court-appointed special advocate program staff member or volunteer;

(28) A juvenile intake or probation officer;

(29) A clergy member, which includes a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization, or an individual reasonably believed to be so by the person consulting him or her, except to the extent the clergy member:

(A) Has acquired knowledge of suspected child maltreatment through communications required to be kept confidential pursuant to the religious discipline of the relevant denomination or faith; or

(B) Received the knowledge of the suspected child maltreatment from the alleged offender in the context of a statement of admission;

(30) An employee of a child advocacy center or a child safety center;

(31) An attorney ad litem in the course of his or her duties as an attorney ad litem;

(32) (A) A sexual abuse advocate or sexual abuse volunteer who works with a victim of sexual abuse as an employee of a community-based victim service or mental health agency such as Safe Places, United Family Services, Inc., or Centers for Youth and Families.

(B) A sexual abuse advocate or sexual abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(33) A rape crisis advocate or rape crisis volunteer;

(34) (A) A child abuse advocate or child abuse volunteer who works with a child victim of abuse or maltreatment as an employee of a community-based victim service or a mental health agency such as Safe Places, United Family Services, Inc., or Centers for Youth and Families.

(B) A child abuse advocate or child abuse volunteer includes a paid or volunteer sexual abuse advocate who is based with a local law enforcement agency;

(35) A victim/witness coordinator;

(36) A victim assistance professional or victim assistance volunteer;

(37) An employee of the Crimes Against Children Division of the Department of Arkansas State Police;

(38) An employee of a reproductive healthcare facility;

(39) A volunteer at a reproductive healthcare facility; and

(40) An individual not otherwise identified in this subsection who is engaged in performing his or her employment duties with a nonprofit charitable organization other than a nonprofit hospital.

(c) (1) A privilege or contract shall not prevent a person from reporting child maltreatment when he or she is a mandated reporter and required to report under this section.

(2) An employer or supervisor of an employee identified as a mandated reporter shall not prohibit an employee or a volunteer from directly reporting child maltreatment to the Child Abuse Hotline.

(3) An employer or supervisor of an employee identified as a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting child maltreatment to the Child Abuse Hotline

HISTORY: Acts 2009, No. 749, § 1; 2009, No. 1409, § 1; 2011, No. 1143, § 8; 2013, No. 725, § 7; 2013, No. 1086, §§ 7, 8; 2015, No. 1056, § 1; 2015, No. 1211, § 3.