



# ARKANSAS SENTENCING COMMISSION

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## Impact Assessment for HB1651 Sponsored by Representative McCullough

**Subtitle** CONCERNING THE OFFENSES OF SEXUAL ASSAULT IN THE SECOND DEGREE AND SEXUAL ASSAULT IN THE THIRD DEGREE WHEN COMMITTED BY A MINOR.

**Impact Summary**<sup>1</sup> Minimal, affecting fewer than ten offenders per year. While the proposed bill could increase the pool of offenders who can commit the offenses of sexual assault in the second degree and sexual assault in the third degree, the exclusion that is eliminated by the proposed bill is uncommon and should not result in a substantial impact on the correctional resources of the state.

**Change from Current Law**<sup>2</sup> Amends provisions of the Arkansas Criminal Code regarding sexual assault by eliminating exceptions for married couples in certain circumstances. Under the proposed bill, a person commits the offense of Sexual assault in the second degree if he or she, being eighteen (18) years of age or older, engages in sexual contact with another person who is less than fourteen (14) years of age. Under current law, the victim must be less than fourteen (14) years of age and not be the offender's spouse. [See attached for a complete reprint of § 5-14-125, Sexual assault in the second degree.] Sexual assault in the second degree is a Class D felony if committed by a minor, or a Class B felony if otherwise committed.

Under the proposed bill, a person commits the offense of Sexual assault in the third degree if he or she, being a minor, engages in sexual intercourse or deviate sexual activity with another person who is less than fourteen (14) years of age. Under current law, the victim must be less than fourteen (14) years of age and not be the offender's spouse. Under current law and the proposed bill, it is an affirmative defense if the actor is not more than three (3) years older than the victim. [See attached for a complete reprint of § 5-14-126, Sexual assault in the third degree.] Sexual assault in the third degree is a Class C felony.

**Impact Information** The proposed bill eliminates the marriage exception to Sexual assault in the second degree and Sexual assault in the third degree. While data does not exist as to the number of instances in which a person could have been charged with Sexual assault in the second degree or Sexual assault in the third degree, but for their marriage to the victim. However, existing data on marriages indicates that it is rare for a child under the age of fourteen (14) to be married in Arkansas. 2019 data from the American Community Survey, conducted by the US Census Bureau, there were no reported married children under fourteen (14) years of age. Further, a 2017 report by Frontline which collected data on marriage age from thirty-eight (38) states. For the years of 2000-2011, as well as 2014, Arkansas reported no marriages of children who were less than fourteen (14) years of age. Due to the low numbers of reported marriages of children under the age of fourteen (14), the projected impact of the proposed bill is minimal.

<sup>1</sup> This impact assessment was prepared 3/18/2021 11:33 AM 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 Corrections 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 A 6-30 years; up to \$15,000  
Class B 5-20 years; up to \$15,000

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

Misdemeanors

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

**A.C.A. § 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 Division of Correction, the Division 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) Employed by or contracted with the Division 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;
    - (iii) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or
    - (iv) 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; 2017, No. 418, § 3; 2019, No. 910, § 671.

**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 Division of Correction, Division of Community Correction, Department of Human Services, or any city or county jail, the victim is in the custody of the Division of Correction, Division of Community Correction, Department of Human Services, or any city or county jail, and the actor 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;

(B) Employed by or contracted with the Division 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;

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

(D) 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; 2017, No. 418, § 4; 2017, No. 660, § 1; 2019, No. 910, § 672.