



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for SB633 Sponsored by Senator Garner

Subtitle TO AMEND THE SEX OFFENDER REGISTRATION ACT OF 1997; AND TO ADD TO THE LIST OF SEX OFFENDERS OR PERSONS CHARGED WITH A SEX OFFENSE SUBJECT TO ELECTRONIC MONITORING.

Impact Summary¹ Cannot be determined. Available data does not indicate the number of additional offenders who may be subject to electronic monitoring under the proposed bill or fail to report and submit to electronic monitoring. For this reason, the projected impact cannot be determined.

Change from Current Law² Amends Arkansas Code Annotated § 12-12-923, Electronic monitoring of sex offenders, to provide that a sex offender is subject to electronic monitoring if the offender is adjudicated guilty of an aggravated sex offense involving a minor. Under the proposed bill, a sex offender is subject to electronic monitoring for a period of not less than ten (10) years from the date of the sex offender's release from incarceration if the sex offender is determined to be a sexually dangerous person under A.C.A. § 12-12-918 or if *the sex offender was adjudicated guilty of an aggravated sex offense involving a minor*. [New language noted with *italics*.] Aggravated sex offense means an offense in the Arkansas Code substantially equivalent to "aggravated sexual abuse" as defined in 18 USCS § 2241 as it existed on March 1, 2003. [See attached for reproduction of relevant code section.]

The proposed bill, as amended, provides statutory authority for the Parole Board, Division of Community Correction, or a circuit court to require, as a condition of a sex offender being released on parole, probation, suspended imposition of sentence, or any other community-based correctional option, that any person convicted of a sex offense be subject to electronic monitoring. A circuit court may also require that a person charged with, but not yet convicted of a sex offense be subject to electronic monitoring as a condition of pre-trial release. Under current law, electronic monitoring can be assigned as a condition of parole or probation. [See A.C.A. § 5-4-303, Conditions of suspension or probation and A.C.A. § 16-93-712, Parole supervision.] The proposed bill requires that the Division of Community Correction pay supervision costs for an indigent offender, regardless of the identity of the supervising agency or status (pre-trial or discharged).

Under current law and the proposed bill, an offender is required to report to the agency responsible for supervising the sex offender and submit to placement of electronic monitoring equipment upon his or her body. If the sex offender fails to report and submit to placement of the equipment, he or she is guilty of a Class C felony. Current law also contains a Class C felony for knowingly altering, tampering with, damaging, or destroying any electronic monitoring equipment worn by a sexually dangerous person. However, the proposed bill does not add language regarding offenders guilty of an aggravated sex offense involving a minor to this section, so it is unlikely that this felony provision would apply to these offenders.

Impact Information The proposed bill creates additional monitoring costs for the Division of Community Correction, increases the pool of offenders who may be subject to a Class C felony for failing to report or submit to electronic monitoring, and provides a statutory mechanism for electronic monitoring of any sex offender. Available data does not indicate the number of additional offenders who may be subject to electronic monitoring under the proposed bill or fail to

¹ This impact assessment was prepared 4/21/2021 4:22 PM 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

² 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

report and submit to the electronic monitoring. However, the bill does clearly create additional obligations for ACC. The projected impact cannot be determined. The following data is for informational purposes only.

The Division of Community Correction (ACC) reports that their current cost for GPS tracking is \$2.95 per offender per day, or \$10,767 per offender over the proposed ten-year supervision period. The Division of Correction (ADC) reports that there are currently 88 offenders serving a term of incarceration for which the Sentencing Order indicated that the offender was adjudicated guilty of an aggravated sex offense involving a minor. For the three (3) year period beginning January 1, 2022 and ending December 31, 2024, the sentence for sixteen (16) of these offenders will expire, requiring that the offender submit to electronic monitoring under the proposed bill.

In addition to those new offenders for whom electronic monitoring will be required under the proposed bill, the bill requires ACC to bear the cost of supervision for all indigent offenders subject to electronic monitoring, regardless of the supervising agency. Because there is no centralized record of the number of offenders subject to all forms of criminal justice supervision, the cost of this proposed change cannot be determined. However, with 17,432 registered sex offenders in the State of Arkansas, this will likely result in a significant increase in electronic monitoring expenses for ACC.

In addition, there are multiple jurisdictions which supervise their own offenders and do not use probation supervision services provided by ACC. Staff from these jurisdictions were unable to provide data on the number of sex offenders currently under their supervision.

The Administrative Office of the Courts (AOC) reports that since January 1, 2019 there were charges filed for over 8,000 counts of sex offenses as defined by § 12-12-903, Definition. [See attached for reprint of relevant portion of code]. Over 2,500 charges were filed which could be sex offenses depending on the circumstances surrounding the offense. The AOC does not collect data on sexually dangerous persons or persons convicted of an aggravated sex offense with a minor victim. Further, AOC was unable to provide data regarding conditions of pre-trial release.

The Arkansas Crime Information Center reports that as of April 21, 2021, there are currently 472 sex offenders assessed as a Sexually Violent Person, or Level 4 Sex Offender. There are an additional 3,618 offenders who have not yet been assessed. While it is unknown how many of these offenders will be assessed as a Level 4 Sex Offender, Level 4 sex offenders typically make up a small percentage of assessments.

The proposed bill also exacerbates an issue present in current law. A.C.A. § 12-12-915, Authority – Rules, provides authority for monitoring offenders under the supervisory authority of either the Division of Community Correction or the Department of Human Services. The code is silent, however, on authority to monitor an offender who is not under any form of criminal justice supervision. It is not uncommon for offenders convicted of aggravated sex offenses to have less than ten years of criminal justice supervision remaining on their sentence upon release from incarceration. The bill as current written is unclear as to which entity has the authority to monitor these offenders once they discharge any period of supervision.

A.C.A. § 12-12-915. Authority — Rules.

(a) The Division of Correction, the Division of Community Correction, the Department of Human Services, the Administrative Office of the Courts, and the Arkansas Crime Information Center shall promulgate rules to establish procedures for:

- (1) Notifying the sex offender of the obligation to register pursuant to this subchapter; and
- (2) Registering the sex offender.

(b)

- (1) The Division of Community Correction shall monitor an adult sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.
- (2) The Department of Human Services shall monitor an adult or juvenile sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

(c)

- (1) The Division of Community Correction shall promulgate rules to establish procedures for monitoring an adult sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.
- (2) The Department of Human Services shall promulgate rules to establish procedures for monitoring an adult or juvenile sex offender under its supervisory authority who is subject to electronic monitoring under § 12-12-923.

History

Acts 1997, No. 989, § 15; 2003 (2nd Ex. Sess.), No. 21, § 7; 2006 (1st Ex. Sess.), No. 4, § 4; 2007, No. 394, § 8; 2019, No. 910, § 719.

A.C.A. § 12-12-903. Definitions. [Partial Section]

(3) “Aggravated sex offense” means an offense in the Arkansas Code substantially equivalent to “aggravated sexual abuse” as defined in 18 U.S.C. § 2241 as it existed on March 1, 2003, which principally encompasses:

- (A) Causing another person to engage in a sexual act:
 - (i) By using force against that other person; or
 - (ii) By threatening or placing or attempting to threaten or place that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;
- (B) Knowingly:
 - (i) Rendering another person unconscious and then engaging in a sexual act with that other person; or
 - (ii) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or similar substance and thereby:
 - (a) Substantially impairing the ability of that other person to appraise or control conduct; and
 - (b) Engaging or attempting to engage in a sexual act with that other person; or
- (C) Crossing a state line with intent to:
 - (i) Engage or attempt to engage in a sexual act with a person who has not attained twelve (12) years of age;
 - (ii) Knowingly engage or attempt to engage in a sexual act with another person who has not attained twelve (12) years of age; or
 - (iii) Knowingly engage or attempt to engage in a sexual act under the circumstances described in subdivisions (3)(A) and (B) of this section with another person who has attained twelve (12) years of age but has not attained sixteen (16) years of age and is at least four (4) years younger than the alleged offender;

(13)

- (A) “Sex offense” includes, but is not limited to:
 - (i) The following offenses:
 - (a) Rape, § 5-14-103;
 - (b) Sexual indecency with a child, § 5-14-110;
 - (c) Sexual assault in the first degree, § 5-14-124;
 - (d) Sexual assault in the second degree, § 5-14-125;
 - (e) Sexual assault in the third degree, § 5-14-126;
 - (f) Sexual assault in the fourth degree, § 5-14-127;
 - (g) Incest, § 5-26-202;
 - (h) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
 - (i) Transportation of minors for prohibited sexual conduct, § 5-27-305;
 - (j) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
 - (k) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
 - (l) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
 - (m) Promoting prostitution in the first degree, § 5-70-104;
 - (n) Stalking, § 5-71-229, when ordered by the sentencing court to register as a sex offender;
 - (o) Indecent exposure, § 5-14-112, if a felony level offense;
 - (p) Exposing another person to human immunodeficiency virus, § 5-14-123, when ordered by the sentencing court to register as a sex offender;
 - (q) Kidnapping pursuant to § 5-11-102(a), when the victim is a minor and the offender is not the parent of the victim;
 - (r) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the victim is a minor and the offender is not the parent of the victim;
 - (s) Permitting abuse of a minor, § 5-27-221, if the abuse of the minor consisted of sexual intercourse, deviant sexual activity, or sexual contact;

- (t) Computer child pornography, § 5-27-603;
 - (u) Computer exploitation of a child, § 5-27-605;
 - (v) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;
 - (w) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;
 - (x) Internet stalking of a child, § 5-27-306;
 - (y) Crime of video voyeurism, § 5-16-101, if a felony level offense;
 - (z) Voyeurism, § 5-16-102, if a felony level offense;
 - (aa) Any felony-homicide offense under § 5-10-101, § 5-10-102, or § 5-10-104 if the underlying felony is an offense listed in this subdivision (13)(A)(i);
 - (bb) Sexually grooming a child, § 5-27-307;
 - (cc) Trafficking of persons under § 5-18-103(a)(4);
 - (dd) Patronizing a victim of human trafficking, § 5-18-104; and
 - (ee) Sexual extortion, § 5-14-113;
- (ii) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision (13)(A)(i) of this section;
 - (iii) An adjudication of guilt for an offense of the law of another state:
 - (a) Which is similar to any of the offenses enumerated in subdivision (13)(A)(i) of this section; or
 - (b) When that adjudication of guilt requires registration under another state's sex offender registration laws;
 - (iv) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (13)(A);
 - (v) An adjudication of guilt for an offense in any federal court, the District of Columbia, a United States territory, a federally recognized Indian tribe, or for a military offense:
 - (1) Which is similar to any of the offenses enumerated in subdivision (13)(A)(i) of this section;
 - (2) When the adjudication of guilt requires registration under sex offender registration laws of another state or jurisdiction; or
 - (3) If the conviction was for a violation of:
 - (a) 18 U.S.C. § 2252C;
 - (b) 18 U.S.C. § 2424; or
 - (c) 18 U.S.C. § 2425; or
 - (vi) An adjudication of guilt for an offense requiring registration under the laws of Canada, the United Kingdom, Australia, New Zealand, or any other foreign country where an independent judiciary enforces a right to a fair trial during the year in which the conviction occurred.
- (B)
- (i) The sentencing court has the authority to order the registration of any offender shown in court to have attempted to commit or to have committed a sex offense even though the offense is not enumerated in subdivision (13)(A)(i) of this section.
 - (ii) This authority applies to sex offenses enacted, renamed, or amended at a later date by the General Assembly unless the General Assembly expresses its intent not to consider the offense to be a true sex offense for the purposes of this subchapter;