



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1635
Sponsored by Representatives Petty & Dotson**

Subtitle CONCERNING AN INCREASE IN THE SENTENCING RANGE FOR REPEAT FELONY SEX OFFENDERS; CONCERNING SEX OFFENDER REGISTRATION REQUIREMENTS; AND CONCERNING SEX OFFENSES AND SEX OFFENDERS.

Impact Summary¹ Cannot be determined.

Change from current law²

Sections 1 & 2. Amend Arkansas Code Annotated § 5-4-501 (a) and (b) to expand the types of offenders eligible for an enhanced sentencing range as a habitual offender. Under the proposed bill, a defendant who is convicted of a felony offense for which he or she is required to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq., and has been found guilty of more than one (1) felony that would require a person to register as a sex offender under the Sex Offender Registration Act is eligible for an enhanced sentencing range. The chart below indicates normal sentencing ranges, ranges available for habitual offenders, and ranges proposed under this bill. Please note that the enhanced range in this section of the proposed bill applies only when the defendant is not subject to a longer term under existing provisions in A.C.A. § 5-4-501.

Felony Class	Normal Range	Habitual (a)	Habitual (b)	Habitual (c) (no parole)	Habitual (d) (no parole)	Proposed bill
Y	10-40 or Life	10-60 or Life	10-Life	40-80 or Life	Life	15-60 or Life
A	6-30	6-50	6-60	40-80 or Life	40-Life	10-40 or Life
B	5-20	5-30	5-40	40-80 or Life	30-60	6-30
C	3-10	3-20	3-30	40-80 or Life	25-40	5-20
D	0-6	0-12	0-15	40-80 or Life	20-40	3-10

*See attached full reproduction of the habitual offender statute [A. C. A. § 5-4-501] for more information.

¹ This impact assessment was prepared (3/26/2019, 8:01 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 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

Section 3. Amends A.C.A. § 5-4-501 to add a new subsection (i), which sets a new minimum term of imprisonment of thirty (30) years for an offender classified as a habitual offender who commits an offense of rape in which the victim is less than fourteen (14) years of age. Currently, the minimum term of imprisonment for an offender who commits an offense of rape in which the victim is less than fourteen (14) years of age is twenty-five (25) years, regardless of the offender's criminal history. [See attached for a copy of A.C.A. § 5-14-103 (c)(2).]

Section 4. Amends A.C.A. § 5-14-124, Sexual assault in the first degree, to remove an element of the offense in one course of conduct. Under current law, 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 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. The proposed bill removes the element of the offense requiring that the offender use his or her position of trust or authority to engage in sexual intercourse or deviate sexual activity. Under current law and the proposed bill, a violation of A.C.A. § 5-14-124, Sexual assault in the first degree, is a Class A felony. [Please note that there are other courses of conduct by which the offense of Sexual assault in the first degree can be committed. This impact focuses solely on the amended portion. See attached for a copy of A.C.A. § 5-14-124.]

Section 5. Amends A.C.A. § 5-14-128, Registered offender living near school, public park, youth center, daycare, or church or other place of worship, to increase the penalty. Currently, a violation of A.C.A. § 5-14-128 is a Class D felony. Under the proposed bill, the penalty is increased to a Class C felony for a first offense, and is increased to a Class B felony if the person has a prior conviction for A.C.A. § 5-14-128 or for a substantially similar offense in another jurisdiction. [See attached for a copy of A.C.A. § 5-14-128.]

Section 6. Rewrites and amends A.C.A. § 12-12-904, Failure to comply with registration and reporting requirements. The proposed bill does not amend existing courses of conduct by which a person can commit the offense of failure to comply with registration and reporting requirements. Under current law and the proposed bill, a violation of A.C.A. § 12-12-904, Failure to comply with registration and reporting requirements, is Class C felony. The proposed bill creates a Class B felony for a second or subsequent offense of failure to comply with registration and reporting requirements.

Impact Information

This proposed bill has several sections for which data does not exist or is not uniformly reported. As a result, the cumulative impact of the bill cannot be determined. The following data is provided for informational purposes only.

Sections 1 & 2. The impact of these sections of the proposed bill cannot be determined. These sections of the proposed bill lengthen the available sentencing range for a person convicted of a sex offense as a habitual offender. The available range depends on which habitual offender statute the offender is charged with. Determination of habitual offender status is entirely dependent upon the criminal history of an offender. While lengthening the available range will likely have an impact on prison sentence length, any determination of impact for this particular section would be purely speculative because data will vary for each individual offender.

Section 3. The impact of this section of the proposed bill cannot be determined. A.C.A. § 5-14-103 sets a minimum term of imprisonment of twenty-five (25) years for a person who commits the offense of rape if the victim is less than fourteen (14) years of age. The proposed bill sets a minimum term of imprisonment of thirty (30) years if the victim is less than fourteen (14) years of age and the offender is classified as a habitual offender under § 5-4-501 (a) or (b), Rape is classified as a 70% crime, meaning a conviction for rape will result in an offender serving at least 70% of his or her sentence before becoming eligible for transfer to community supervision. This section of the proposed bill will subject a person who committed the offense of rape of a person who is less than fourteen (14) years of age to a lengthened sentencing range, with a minimum sentence of thirty (30) years: 30 to 60 years, or life. Further, he or she would be required to serve at least 70% of his or her sentence before becoming eligible for transfer to community supervision.

Section 4. The impact of this section of the proposed bill is projected to be minimal. The Arkansas Department of Correction (ADC) reports that there are currently 247 inmates serving a term of incarceration for A.C.A. § 5-14-124,

Sexual assault in the first degree. Of those, 216 inmates are serving a term of incarceration for which A.C.A. § 5-14-124, Sexual assault in the first degree, is the primary offense.

Section 5. The impact of this section of the proposed bill cannot be determined. ADC reports that there are currently thirty-one (31) inmates serving a term of incarceration for A.C.A. § 5-14-128, Registered offender living near school, public park, youth center, daycare, or church or other place of worship. Of those, seventeen (17) inmates are serving a term of incarceration for which A.C.A. § 5-14-128, Registered offender living near school, public park, youth center, daycare, or church or other place of worship, is the primary offense. Data is unavailable as to the number of offenders who have a prior conviction for this offense or similar offense from another jurisdiction; therefore, any determination of impact would be speculative.

Section 6. The impact of this section of the proposed bill cannot be determined. The following data is provided for informational purposes only. The Arkansas Crime Information Center reports that there are 631 registered sex offenders with two (2) or more convictions for a violation of A.C.A. § 12-12-904, Failure to comply with registration and reporting requirements. Of those, 481 had two (2) convictions, 109 had three (3) convictions, thirty-nine (39) had four (4) convictions, one (1) had five (5) convictions, and one (1) and six (6) convictions. This data includes all sex offenders on the registry, and is not limited by date.

ADC reports there are currently 644 inmates serving a term of incarceration for A.C.A. § 12-12-904, Failure to comply with registration and reporting requirements. Of those, 212 inmates are serving a term of incarceration for which A.C.A. § 12-12-904, Failure to comply with registration and reporting requirements, is the primary offense. ADC data does not distinguish which offenders serving a term of incarceration for A.C.A. § 12-12-904 had a prior conviction for A.C.A. § 12-12-904. Therefore, any determination of impact would be speculative.

A.C.A. § 5-4-501. Habitual offenders -- Sentencing for felony.

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

(A) A defendant who:

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

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

(B) A defendant who:

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

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

(C) A defendant who:

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

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

(2) The extended term of imprisonment for a defendant described in subdivision (a)(1) of this section is as follows:

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

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

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

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

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

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

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

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

(A) A defendant who:

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

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

(B) A defendant who:

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

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

(C) A defendant who:

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

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

(2) The extended term of imprisonment for a defendant described in subdivision (b)(1) of this section is as follows:

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

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

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

(40) years;

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

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

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

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

(c) (1) Except as provided in subdivision (c)(3) of this section, a defendant who is convicted of a serious felony involving violence enumerated in subdivision (c)(2) of this section and who previously has been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the serious felony involving violence conviction and shall be sentenced:

(A) To imprisonment for a term of not less than forty (40) years nor more than eighty (80) years, or life; and

(B) Without eligibility for parole or community correction transfer except under § 16-93-615.

(2) As used in this subsection, "serious felony involving violence" means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102, involving an activity making it a Class Y felony;

(iv) Aggravated robbery, § 5-12-103;

(v) Terroristic act, § 5-13-310, involving an activity making it a Class Y felony;

(vi) Rape, § 5-14-103;

(vii) Sexual assault in the first degree, § 5-14-124;

(viii) Causing a catastrophe, § 5-38-202(a);

(ix) Aggravated residential burglary, § 5-39-204; or

(x) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable serious felony involving violence from another jurisdiction.

(3) A defendant who is convicted of rape, § 5-14-103, or sexual assault in the first degree, § 5-14-124, involving a victim less than fourteen (14) years of age and who has previously been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the rape or sexual assault in the first degree conviction and shall be sentenced to life in prison without the possibility of parole.

(4) (A) The following procedure governs a trial at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the serious felony involving violence with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)

(a) If the defendant is found guilty of the serious felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of a prior serious felony involving violence and shall determine the number of prior serious felony involving violence convictions, if any.

(b) The defendant has the right to hear and controvert evidence described in subdivision (c)(4)(A)(ii)(a) of this section and to offer evidence in his or her support;

(iii)

(a) The trial court shall then instruct the jury as to the number of prior convictions for a serious felony involving violence and the statutory sentencing range.

(b) The jury may be advised as to the nature of a prior serious felony involving violence conviction and the date and place of a prior serious felony involving violence conviction; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to an enumerated serious felony involving violence under Arkansas criminal law lies within the discretion of the trial judge at the time of

sentencing.

(d) (1) A defendant who is convicted of a felony involving violence enumerated in subdivision (d)(2) of this section and who previously has been convicted of two (2) or more of the felonies involving violence enumerated in subdivision (d)(2) of this section may be sentenced to pay any fine authorized by law for the felony involving violence conviction and shall be sentenced to an extended term of imprisonment without eligibility for parole or community correction transfer except under § 16-93-615 as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than life in prison;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than forty (40) years nor more than life in prison;

(C) For a conviction of a Class B felony or for a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment of not less than thirty (30) years nor more than sixty (60) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than twenty-five (25) years nor more than forty (40) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not less than twenty (20) years nor more than forty (40) years; and

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than three (3) times the maximum sentence for the unclassified felony offense.

(2) As used in this subsection, "felony involving violence" means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102;

(iv) Aggravated robbery, § 5-12-103;

(v) Rape, § 5-14-103;

(vi) Battery in the first degree, § 5-13-201;

(vii) Terroristic act, § 5-13-310;

(viii) Sexual assault in the first degree, § 5-14-124;

(ix) Sexual assault in the second degree, § 5-14-125;

(x) Domestic battering in the first degree, § 5-26-303;

(xi) Residential burglary, § 5-39-201(a);

(xii) Aggravated residential burglary, § 5-39-204;

(xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(xiv) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;

(xv) A felony attempt, solicitation, or conspiracy to commit:

(a) Capital murder, § 5-10-101;

(b) Murder in the first degree, § 5-10-102;

(c) Murder in the second degree, § 5-10-103;

(d) Kidnapping, § 5-11-102;

(e) Aggravated robbery, § 5-12-103;

(f) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;

(g) Rape, § 5-14-103;

(h) Battery in the first degree, § 5-13-201;

(i) Domestic battering in the first degree, § 5-26-303;

(j) Residential burglary, § 5-39-201(a); or

(k) Aggravated residential burglary, § 5-39-204; or

(xvi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable felony involving violence from another jurisdiction.

(3) (A) The following procedure governs a trial at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the felony involving violence with which the defendant is currently

charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)

(a) If the defendant is found guilty of the felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of two (2) or more prior felonies involving violence and shall determine the number of prior felony involving violence convictions, if any.

(b) The defendant has the right to hear and controvert evidence described in subdivision (d)(3)(A)(ii)(a) of this section and to offer evidence in his or her support;

(iii)

(a) The trial court shall then instruct the jury as to the number of prior felony involving violence convictions and the statutory sentencing range.

(b) The jury may be advised as to the nature of a prior felony involving violence conviction and the date and place of a prior felony involving violence conviction; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to an enumerated felony involving violence under Arkansas criminal law lies within the discretion of the trial judge at the time of sentencing.

(e)

(1) For the purpose of determining whether a defendant has previously been convicted or found guilty of two (2) or more felonies, a conviction or finding of guilt of burglary, § 5-39-201, and of the felony that was the object of the burglary are considered a single felony conviction or finding of guilt.

(2) A conviction or finding of guilt of an offense that was a felony under the law in effect prior to January 1, 1976, is considered a previous felony conviction or finding of guilt.

(f) For the purposes of determining whether a defendant has previously been convicted of a serious felony involving violence or a felony involving violence under subsections (c) and (d) of this section, the entry of a plea of guilty or nolo contendere or a finding of guilt by a court to a felony enumerated in subsections (c) and (d) of this section, respectively, as a result of which a court places the defendant on a suspended imposition of sentence, a suspended sentence, or probation, or sentences the defendant to the Department of Correction, is considered a previous felony conviction.

(g) Any defendant deemed eligible to be sentenced under a provision of both subsections (c) and (d) of this section shall be sentenced only under subsection (d) of this section.

(h) If the provisions of subsection (c) or (d) of this section, or both, are held invalid by a court, the defendant's case shall be remanded to the trial court for resentencing of the defendant under the provisions of subsections (a) and (b) of this section.

HISTORY: Acts 1975, No. 280, § 1001; 1977, No. 474, § 4; 1981, No. 620, § 9; 1983, No. 409, § 3; A.S.A. 1947, § 41-1001; Acts 1993, No. 532, § 7; 1993, No. 550, § 7; 1995, No. 1009, § 1; 1995, No. 1011, § 1; 1997, No. 1197, § 1; 2001, No. 1553, § 6; 2003, No. 1390, § 2; 2006 (1st Ex. Sess.), No. 5, § 1; 2007, No. 827, §§ 15, 16; 2007, No. 852, § 1; 2009, No. 1395, §§ 1, 2; 2011, No. 570, §§ 19, 20; 2015, No. 895, § 3; 2017, No. 367, §§ 2-4.

A.C.A. § 5-14-103. Rape.

(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person:

(1) By forcible compulsion;

(2) Who is incapable of consent because he or she is:

(A) Physically helpless;

(B) Mentally defective; or

(C) Mentally incapacitated;

(3)

(A) Who is less than fourteen (14) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or

(4) (A) Who is a minor and the actor is the victim's:

(i) Guardian;

(ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;

- (iii) Brother or sister of the whole or half blood or by adoption; or
- (iv) Nephew, niece, or first cousin.

(B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under subdivision (a)(3) or subdivision (a)(4) of this section that the victim consented to the conduct.

(c)

(1) Rape is a Class Y felony.

(2) Any person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.

(d) (1) A court may issue a permanent no contact order when:

(A) A defendant pleads guilty or nolo contendere; or

(B) All of the defendant's appeals have been exhausted and the defendant remains convicted.

(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(e) A person convicted of rape is subject to § 9-10-121.

HISTORY: Acts 1975, No. 280, § 1803; 1981, No. 620, § 12; 1985, No. 281, § 2; 1985, No. 919, § 2; A.S.A. 1947, § 41-1803; Acts 1993, No. 935, § 1; 1997, No. 831, § 1; 2001, No. 299, § 1; 2001, No. 1738, § 1; 2003, No. 1469, § 3; 2006 (1st Ex. Sess.), No. 5, § 2; 2009, No. 748, § 8; 2013, No. 210, § 2; 2017, No. 472, § 19.

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) 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;

(C) 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

(D) 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)(D) 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; 2017, No. 418, § 2.

A.C.A. § 5-14-128. Registered offender living near school, public park, youth center, daycare, or church or other place of worship prohibited.

- (a) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a:
- (1) Level 3 or Level 4 offender may not knowingly reside within two thousand feet (2,000') of the property on which a public or private elementary or secondary school, public park, youth center, or daycare facility is located; or
 - (2) Level 4 offender may not knowingly reside within two thousand feet (2,000') of a church or other place of worship.
- (b)
- (1) It is not a violation of this section if the property on which the sex offender resides is owned and occupied by the sex offender and was purchased prior to the date on which the public or private elementary or secondary school, public park, youth center, daycare facility, or church or other place of worship was established.
 - (2) The exclusion in subdivision (b)(1) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after the public or private elementary or secondary school, public park, youth center, daycare facility, or church or other place of worship is established.
- (c) (1) (A) With respect to a public or private elementary or secondary school or a daycare facility, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 16, 2003.
- (B) With respect to a public park or youth center, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 31, 2007.
- (2)
 - (A) The exclusion in subdivision (c)(1)(A) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after July 16, 2003.
 - (B) The exclusion in subdivision (c)(1)(B) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense on or after July 31, 2007.
 - (3) With respect to a church or other place of worship, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 22, 2015.
- (d) A violation of this section is a Class D felony.
- (e)
- (1) A person who is charged with violating this section shall be ordered as a condition of his or her release from custody not to return to the location where he or she was residing that was located within two thousand feet (2,000') of a public or private elementary or secondary school, public park, youth center, daycare facility, or church or other place of worship until the charge is adjudicated.
 - (2) The court having jurisdiction over the charge may order that the defendant be allowed to return to his or her residence before the adjudication of the charge if good cause is shown.
- (f) As used in this section:
- (1) "Church or other place of worship" means a physical location that has a primary purpose of facilitating the meeting of persons in order to practice a religion;
 - (2) "Public park" means any property owned or maintained by this state or a county, city, or town in this state for the recreational use of the public; and
 - (3) "Youth center" means any building, structure, or facility owned or operated by a not-for-profit organization or by this state or a county, city, or town in this state for use by minors to promote the health, safety, or general welfare of the minors.

HISTORY: Acts 2003, No. 330, § 3; 2007, No. 818, § 1; 2009, No. 1406, § 1; 2015, No. 376, § 1.