



## ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114

Phone: (501) 682-5001 • Fax: (501) 682-5018

### 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 Summary<sup>1</sup>** Cannot be determined. Available data does not indicate how many additional offenders may be subject to electronic monitoring under the proposed bill or how many offenders would fail to report and submit to electronic monitoring. For this reason, the projected impact cannot be determined.

**Change from Current Law<sup>2</sup>** 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 *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 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.]

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 can potentially commit a Class C felony by 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 how many additional offenders may be subject to electronic monitoring under the proposed bill or how many offenders would fail to report and submit to the electronic monitoring. For this reason, the projected impact cannot be determined. The following data is for informational purposes only.

<sup>1</sup> This impact assessment was prepared 4/13/2021 5:36 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

<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

The Division of Community Correction (ACC) reports that the current cost for GPS tracking is \$2.95 per offender per day, or \$10,767 per offender over the ten-year supervision period proposed in this bill. 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.

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, which includes offenders who receive a suspended imposition of sentence or an offender who “flattens” their sentence. It is not uncommon for offenders convicted of aggravated sex offenses to have less than ten (10) years of criminal justice supervision remaining on their sentence upon release from incarceration. The bill as currently written is unclear as to which entity has the duty to monitor these offenders once they discharge any period of supervision.

**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;

**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.