



## ARKANSAS SENTENCING COMMISSION

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### **Impact Assessment for SB552 Sponsored by Senator Hester**

**Subtitle** TO CREATE THE OFFENSE OF CAPITAL RAPE.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from Current Law**<sup>2</sup> The proposed bill amends Title 5 of the Arkansas Code Annotated to add an additional section, Capital rape, A.C.A. § 5-14-114, and amends various provisions of the Arkansas Code Annotated regarding Capital rape. Please note that while a large number of code provisions are amended by this proposed bill, only those impacting criminal penalties will be analyzed in this impact assessment.

Under the proposed bill, a person commits Capital rape if, 1) by forcible compulsion, he or she engages in sexual intercourse or deviate sexual activity with another person who is younger than seventeen (17) years of age and causes or threatens to cause serious physical injury to the other person; 2) he or she engages in sexual intercourse or deviate sexual activity with another person who is younger than fourteen (14) years of age and causes or threatens to cause serious physical injury to the other person; 3) During the course of or in furtherance of an enumerated felony (see bill for complete list) the person or an accomplice engages in sexual intercourse or deviate sexual activity with another person who is younger than fourteen (14) years of age; 4) the person enters into an agreement in which, in return for anything of value, he or she engages in sexual intercourse or deviate sexual activity with another person who is younger than fourteen (14) years of age; 5) the person, while using or threatening to use a deadly weapon, engages in sexual intercourse or deviate sexual activity with another person who is younger than fourteen (14) years of age; 6) he or she engages in sexual intercourse or deviate sexual activity with another person who is younger than fourteen (14) years of age after having been previously convicted of rape under § 5-14-103(a)(3) or Capital rape under this section; or 7) he or she commits rape under § 5-10-103 or Capital rape under subdivisions (a)(1)-(5) of this section after having been previously convicted of rape under § 5-14-103(a)(3) or Capital rape under this section.

Under current law, the rape of a person who is younger than fourteen (14) years of age is a Class Y felony, with a mandatory minimum term of imprisonment of twenty-five (25) years. Under the proposed bill, Capital rape is punishable by death, life imprisonment without parole, or, if the defendant was younger than eighteen (18)

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<sup>1</sup> This impact assessment was prepared 4/3/2023 10:13 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

years of age at the time he or she committed the offense, life imprisonment with the possibility of parole after serving a minimum of thirty (30) years imprisonment. Attempt, solicitation, or conspiracy to commit the offense of Capital rape is a Class A felony under the proposed bill.

The proposed bill also amends provisions of Title 16 of the Arkansas Code to make offenders convicted of Capital rape ineligible for parole and amends various provisions regarding capital offenses and violent and sex offense designations to include the newly created offense of Capital rape. Under current law, Rape is designated as a sexual and violent offense and is not eligible for parole until the offender has served a minimum of seventy percent (70%) of his or her sentence.

**Impact Information** The proposed bill increases the penalty for some courses of conduct that are currently punishable under A.C.A. § 5-14-103, Rape. Data for rape convictions and sentences are not specific as to the age of the victim and the circumstances of the offense. For this reason, the impact cannot be determined. The data below is provided for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning January 1, 2020 and ending December 31, 2022, there were 434 convictions for a violation of A.C.A. § 5-14-103, Rape, a Class Y felony, as currently written. AOC data does not distinguish between the various courses of conduct by which a person can commit the offense of rape.

The Arkansas Division of Correction reports 1,742 inmates currently serving a term of incarceration for a violation of A.C.A. § 5-14-103, Rape, a Class Y felony, as currently written. 1,667 of these offenders are serving a sentence for which A.C.A. § 5-14-103, Rape, is the most serious offense. The below table sets out the length of sentence for offenders currently serving a sentence for which A.C.A. § 5-14-103, Rape, is the most serious offense.

<b>Length of Sentence</b>	<b>Number of Offenders</b>
Life or Life without Parole	210
≥80 years	81
≥ 60 years but < 80 years	99
≥ 40 years but < 60 years	284
≥ 25 years but < 40 years	603
< 25 years	390

**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) Except as provided under § 5-4-104(c)(2), a 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; 2021, No. 1102, § 2.