

Criminal Law
Regarding
Child Abuse & Neglect Cases

5-11-101. Definitions.

As used in this chapter:

(1) "Deviate sexual activity" means the same as defined in § 5-14-101;

(2)(A) "Incompetent" means that a person is unable to care for himself or herself because of physical or mental disease or defect.

(B) The status embraced by "incompetent" may or may not exist regardless of any adjudication concerning incompetency;

(3) "Restraint without consent" includes:

(A) Restraint by physical force, threat, or deception; or

(B) In the case of a person who is under fourteen (14) years of age or incompetent, restraint without the consent of a parent, guardian, or other person responsible for general supervision of his or her welfare;

(4) "Sexual contact" means the same as defined in § 5-14-101;

(5) "Sexual intercourse" means the same as defined in § 5-14-101; and

(6) "Vehicle" means any craft or device designed for the transportation of a person or property across land or water or through the air.

History. Acts 1975, No. 280, § 1701; 1977, No. 360, § 5; A.S.A. 1947, § 41-1701.

5-11-102. Kidnapping.

(a) A person commits the offense of kidnapping if, without consent, the person restrains another person so as to interfere substantially with the other person's liberty with the purpose of:

(1) Holding the other person for:

(A) Ransom or reward; or

(B) Any other act to be performed or not performed for the other person's return or release;

(2) Using the other person as a shield or hostage;

- (3) Facilitating the commission of any felony or flight after the felony;
- (4) Inflicting physical injury upon the other person;
- (5) Engaging in sexual intercourse, deviate sexual activity, or sexual contact with the other person;
- (6) Terrorizing the other person or another person; or
- (7) Interfering with the performance of any governmental or political function.

(b)(1) Kidnapping is a Class Y felony.

(2) However, kidnapping is a Class B felony if the defendant shows by a preponderance of the evidence that he or she or an accomplice voluntarily released the person restrained alive and in a safe place prior to trial.

History. Acts 1975, No. 280, § 1702; 1977, No. 474, § 15; 1981, No. 620, § 11; A.S.A. 1947, § 41-1702.

5-11-103. False imprisonment in the first degree.

(a) A person commits the offense of false imprisonment in the first degree if, without consent and without lawful authority, the person knowingly restrains another person so as to interfere substantially with the other person's liberty in a manner that exposes the other person to a substantial risk of serious physical injury.

(b) False imprisonment in the first degree is a Class C felony.

History. Acts 1975, No. 280, § 1703; A.S.A. 1947, § 41-1703.

5-11-104. False imprisonment in the second degree.

(a) A person commits the offense of false imprisonment in the second degree if, without consent and without lawful authority, the person knowingly restrains another person so as to interfere substantially with the other person's liberty.

(b) False imprisonment in the second degree is a Class A misdemeanor.

History. Acts 1975, No. 280, § 1704; A.S.A. 1947, § 41-1704.

5-11-106. Permanent detention or restraint.

(a) A person commits the offense of permanent detention or restraint if, without consent and without lawful authority, the person restrains a person with the purpose of holding or concealing the other person:

(1) Without ever releasing the other person; or

(2) Without ever returning the other person to the person or institution from whose lawful custody the other person was taken.

(b)(1) Permanent detention or restraint is a Class B felony.

(2) However, permanent detention or restraint is a Class D felony if the person detained or restrained is the child of the defendant.

History. Acts 1975, No. 280, § 1706, as added by Acts 1977, No. 360, § 6; A.S.A. 1947, § 41-1706.

5-11-108. Trafficking of persons.

(a) As used in this section:

(1) "Debt bondage" means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of the personal services of a person under his or her control as a security for debt, if:

(A) The value of the debtor's personal services or of the personal services of a person under his or her control as reasonably assessed is not applied toward the liquidation of the debt; or

(B) The length and nature of the debtor's personal services or of the personal services of a person under his or her control are not respectively limited and defined;

(2) "Involuntary servitude" means a condition of servitude induced by means of:

(A) Any scheme, plan, or pattern of behavior intended to cause a person to believe that if he or she does not enter into or continue the servitude, he or she or another person will suffer serious physical injury or physical restraint; or

- (B) The abuse or threatened abuse of the legal process;
- (3) "Peonage" means holding a person against his or her will to pay off a debt; and
- (4) "Sexual conduct" means the same as defined in § 5-27-401.
- (b) A person commits the offense of trafficking of persons if he or she:
 - (1) Recruits, harbors, transports, or obtains a person for labor or services through the use of force, fraud, or coercion for the purpose of subjecting the person to:
 - (A) Involuntary servitude;
 - (B) Peonage;
 - (C) Debt bondage;
 - (D) Slavery;
 - (E) Marriage;
 - (F) Adoption; or
 - (G) Sexual conduct; or
 - (2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (b)(1) of this section.
- (c) Trafficking of persons is a Class A felony.

History. Acts 2005, No. 2267, § 1.

5-13-201. Battery in the first degree.

(a) A person commits battery in the first degree if:

(1) With the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon;

(2) With the purpose of seriously and permanently disfiguring another person or of destroying, amputating, or permanently disabling a member or organ of that other person's body, the person causes such an injury to any person;

(3) The person causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life;

(4) Acting alone or with one (1) or more other persons:

(A) The person commits or attempts to commit a felony; and

(B) In the course of and in furtherance of the felony or in immediate flight from the felony:

(i) The person or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life; or

(ii) Another person who is resisting the felony or flight causes serious physical injury to any person;

(5) With the purpose of causing serious physical injury to an unborn child or to a woman who is pregnant with an unborn child, the person causes serious physical injury to the unborn child;

(6) The person knowingly causes physical injury to a pregnant woman in the commission of a felony or a Class A misdemeanor, and in so doing, causes serious physical injury to the pregnant woman's unborn child, and the unborn child is subsequently born alive;

(7) The person intentionally or knowingly, without legal justification, causes serious physical injury to a person he or she knows to be twelve (12) years of age or younger; or

(8) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a firearm.

(b) It is an affirmative defense in any prosecution under subdivision (a)(4) of this section in which the defendant was not the only participant that the defendant:

(1) Did not commit the battery or in any way solicit, command, induce, procure, counsel, or

aid the battery's commission;

- (2) Was not armed with a deadly weapon;
 - (3) Reasonably believed that no other participant was armed with a deadly weapon; and
 - (4) Reasonably believed that no other participant intended to engage in conduct that could result in serious physical injury.
- (c) Battery in the first degree is a Class B felony.

History. Acts 1975, No. 280, § 1601; A.S.A. 1947, § 41-1601; Acts 1987, No. 482, § 1; 1995, No. 360, § 1; 1995, No. 1305, § 1; 2005, No. 1994, § 474.

5-13-202. Battery in the second degree.

- (a) A person commits battery in the second degree if:
 - (1) With the purpose of causing physical injury to another person, the person causes serious physical injury to any person;
 - (2) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a deadly weapon other than a firearm;
 - (3) The person recklessly causes serious physical injury to another person by means of a deadly weapon; or
 - (4) The person intentionally or knowingly, without legal justification, causes physical injury to a person he or she knows to be:
 - (A)(i) A law enforcement officer, firefighter, or employee of a correctional facility while the law enforcement officer, firefighter, or employee of a correctional facility is acting in the line of duty.
 - (ii) As used in this subdivision (a)(4)(A), "employee of a correctional facility" includes a person working under a professional services contract with the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Health and Human Services;
- (B) A teacher or other school employee while acting in the course of employment;
- (C) An individual sixty (60) years of age or older or twelve (12) years of age or younger;

(D) An officer or employee of the state while the officer or employee of the state is acting in the performance of his or her lawful duty;

(E) While performing medical treatment or emergency medical services or while in the course of other employment relating to his or her medical training:

(i) A physician;

(ii) A person certified as an emergency medical technician, as defined in § 20-13-202;

(iii) A licensed or certified health care professional; or

(iv) Any other health care provider; or

(F) An individual who is incompetent, as defined in § 5-25-101.

(b) Battery in the second degree is a Class D felony.

History. Acts 1975, No. 280, § 1602; 1981, No. 877, § 1; 1983, No. 12, § 1; A.S.A. 1947, § 41-1602; Acts 1995, No. 1173, § 1; 1995, No. 1305, § 2; 1995, No. 1338, § 1; 1997, No. 207, § 1; 1997, No. 878, § 1; 1999, No. 389, § 1; 2003, No. 66, § 1.

5-13-203. Battery in the third degree.

(a) A person commits battery in the third degree if:

(1) With the purpose of causing physical injury to another person, the person causes physical injury to any person;

(2) The person recklessly causes physical injury to another person;

(3) The person negligently causes physical injury to another person by means of a deadly weapon; or

(4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance.

(b) Battery in the third degree is a Class A misdemeanor.

History. Acts 1975, No. 280, § 1603; A.S.A. 1947, § 41-1603.

5-13-204. Aggravated assault.

(a) A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:

(1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person; or

(2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person.

(b) Aggravated assault is a Class D felony.

(c) The provisions of this section do not apply to:

(1) A law enforcement officer acting within the scope of his or her duty; or

(2) Any person acting in self-defense or the defense of a third party.

History. Acts 1975, No. 280, § 1604; A.S.A. 1947, § 41-1604; Acts 2003, No. 1113, § 1.

5-13-205. Assault in the first degree.

(a) A person commits assault in the first degree if he or she recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person.

(b) Assault in the first degree is a Class A misdemeanor.

History. Acts 1975, No. 280, § 1605; A.S.A. 1947, § 41-1605.

5-13-206. Assault in the second degree.

(a) A person commits assault in the second degree if he or she recklessly engages in conduct that creates a substantial risk of physical injury to another person.

(b) Assault in the second degree is a Class B misdemeanor.

History. Acts 1975, No. 280, § 1606; A.S.A. 1947, § 41-1606.

5-13-207. Assault in the third degree.

(a) A person commits assault in the third degree if he or she purposely creates apprehension of imminent physical injury in another person.

(b) Assault in the third degree is a Class C misdemeanor.

History. Acts 1975, No. 280, § 1607; A.S.A. 1947, § 41-1607.

5-13-208. Coercion.

(a) A person commits coercion if he or she compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by purposeful conduct designed to instill in the other person a fear that, if a demand is not complied with, the actor or another person will:

(1) Cause physical injury to any person;

(2) Cause damage to property;

(3) Subject any person to physical confinement;

(4) Accuse any person of an offense or cause criminal proceedings to be instituted against any person; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule.

(b) Coercion is a Class A misdemeanor.

History. Acts 1975, No. 280, § 1609; A.S.A. 1947, § 41-1609.

5-13-210. Introduction of controlled substance into body of another person.

(a) It is unlawful for any person to inject any controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq., into the human body of another person, unless the controlled substance has been ordered for the person receiving the controlled substance by a licensed practitioner, licensed by the state to prescribe controlled substances in the schedule involved and this being for a legitimate medical purpose.

(b) It is unlawful for any person to administer or cause to be ingested, inhaled, or otherwise introduced into the human body of another person a controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq., unless the controlled substance has been ordered for the person receiving the controlled substance by a licensed practitioner, licensed by the state to prescribe controlled substances in the schedule involved and this being for a legitimate medical purpose.

(c) Any person who violates this section with respect to:

(1) A controlled substance in Schedule I or Schedule II, which is a narcotic drug, is guilty of a Class Y felony;

(2) Any other controlled substance in Schedule I, Schedule II, or Schedule III is guilty of a Class B felony; or

(3) Any other controlled substance in Schedule IV, Schedule V, or Schedule VI is guilty of a Class C felony.

(d) The provisions of this section and any criminal penalty provided for in this section are in addition to any other criminal penalty a person may be subjected to under a provision of the Arkansas Criminal Code or the Uniform Controlled Substances Act, § 5-64-101 et seq.

(e) It is not a defense under a provision of this section that a person:

(1) Consented to being injected with the controlled substance; or

(2) Ingested, inhaled, or otherwise introduced the controlled substance into his or her human body knowingly and voluntarily.

(f) Notwithstanding a provision of subsection (c) of this section, any person is guilty of a Class Y felony who violates this section by introducing a controlled substance into the body of another person without that other person's knowledge or consent with the purpose of:

(1) Committing any felony sexual offense, as defined in Arkansas law;

(2) Engaging in any unlawful sexual act, as defined in § 5-14-101 et seq.;

(3) Engaging in any unlawful sexual contact, as defined in § 5-14-101; or

(4) Engaging in any act involving a child engaging in sexual explicit conduct, as defined in §

5-27-302.

History. Acts 1987, No. 848, §§ 1-3; 1999, No. 516, § 1.

5-14-101. Definitions.

As used in this chapter:

(1) "Deviate sexual activity" means any act of sexual gratification involving:

(A) The penetration, however slight, of the anus or mouth of a person by the penis of another person; or

(B) The penetration, however slight, of the labia majora or anus of a person by any body member or foreign instrument manipulated by another person;

(2) "Forcible compulsion" means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person;

(3) "Guardian" means a parent, stepparent, legal guardian, legal custodian, foster parent, or any person who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor;

(4)(A) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person:

(i) Incapable of understanding the nature and consequences of a sexual act; or

(ii) Unaware a sexual act is occurring.

(B) A determination that a person is mentally defective shall not be based solely on the person's intelligence quotient;

(5) "Mentally incapacitated" means that a person is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance:

(A) Administered to the person without the person's consent; or

(B) That renders the person unaware a sexual act is occurring;

(6) "Physically helpless" means that a person is:

(A) Unconscious;

(B) Physically unable to communicate a lack of consent; or

(C) Rendered unaware a sexual act is occurring;

(7) "Public place" means a publicly or privately owned place to which the public or a substantial number of people have access;

(8) "Public view" means observable or likely to be observed by a person in a public place;

(9) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female; and

(10) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis.

History. Acts 1975, No. 280, § 1801; 1985, No. 327, § 1; 1985, No. 563, § 1; A.S.A. 1947, § 41-1801; Acts 1995, No. 525, § 1; 2001, No. 1724, § 1.

5-14-102. In general.

(a) The definition of an offense that excludes conduct with a spouse shall not be construed to preclude accomplice liability of a spouse.

(b) When the criminality of conduct depends on a child's being below fourteen (14) years of age and the actor is twenty (20) years of age or older, it is no defense that the actor:

(1) Did not know the age of the child; or

(2) Reasonably believed the child to be fourteen (14) years of age or older.

(c)(1) When criminality of conduct depends on a child's being below fourteen (14) years of age and the actor is under twenty (20) years of age, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.

(2) However, the actor may be guilty of the lesser offense defined by the age that the actor reasonably believed the child to be.

(d)(1) When criminality of conduct depends on a child's being below a critical age older than fourteen (14) years, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.

(2) However, the actor may be guilty of the lesser offense defined by the age that the actor

reasonably believed the child to be.

(e) When criminality of conduct depends on a victim's being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent.

History. Acts 1975, No. 280, § 1802; 1985, No. 281, § 1; 1985, No. 870, § 4; 1985, No. 919, § 1; A.S.A. 1947, § 41-1802; Acts 2003, No. 1323, § 2.

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 less than eighteen (18) years of age 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 subdivisions (a)(3) or (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 such orders as are consistent with § 5-2-305.

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.

5-14-110. Sexual indecency with a child.

(a) A person commits sexual indecency with a child if:

(1) Being eighteen (18) years of age or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:

(A) Sexual intercourse;

(B) Deviate sexual activity; or

(C) Sexual contact;

(2)(A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of any other person, the person purposely exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim; or

(3) Being eighteen (18) years of age or older, the person causes or coerces another person

who is less than fourteen (14) years of age to expose his or her sex organs or the breast of a female with the purpose to arouse or gratify a sexual desire of himself, herself, or another person.

(b) Sexual indecency with a child is a Class D felony.

History. Acts 1975, No. 280, § 1810; A.S.A. 1947, § 41-1810; Acts 1995, No. 550, § 1; 2001, No. 1821, § 1; 2005, No. 1993, § 1.

5-14-124. Sexual assault in the first degree.

(a) A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with another person who is less than eighteen (18) years of age and is not the actor's spouse and the actor is:

(1) Employed with the Department of Correction, the Department of Community Correction, the Department of Health and 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 Health and Human Services, any city or county jail or juvenile detention facility, or their contractors or agents;

(2) A professional under § 12-12-507(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

(3) 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.

(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)(3) 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.

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 another person who is less than eighteen (18) years of age and the actor is:

(i) Employed with the Department of Correction, Department 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) A professional under § 12-12-507(b) and is in a position of trust or authority over the minor; or

(iii) 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 less than eighteen (18) years of age, 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 in a public school in a grade kindergarten through twelve (K-12) and engages in sexual contact with another person who is:
 - (A) A student enrolled in the public 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 person less than eighteen (18) years of age 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.

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 Department of Correction, Department of Community Correction, Department of Health and Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Health and Human Services, or any city or county jail; or
 - (B) A professional under § 12-12-507(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 under eighteen (18) years of age, 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.

5-14-127. Sexual assault in the fourth degree.

(a) A person commits sexual assault in the fourth degree if the person:

(1) Being twenty (20) years of age or older, engages in sexual intercourse or deviate sexual activity with another person who is:

(A) Less than sixteen (16) years of age; and

(B) Not the person's spouse; or

(2) Engages in sexual contact with another person who is:

(A) Less than sixteen (16) years of age; and

(B) Not the person's spouse.

(b)(1) Sexual assault in the fourth degree under subdivision (a)(1) of this section is a Class D felony.

(2) Sexual assault in the fourth degree under subdivision (a)(2) of this section is a Class A misdemeanor if the person engages only in sexual contact with another person as described in subdivision (a)(2) of this section.

History. Acts 2001, No. 1738, § 5; 2003, No. 1325, § 1.

5-14-128. Registered offender living near school or daycare prohibited.

(a) It is unlawful for 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 Level 3 or Level 4 offender to reside within two thousand feet (2,000') of the property on which any public or private elementary or secondary school or daycare facility is located.

(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 or daycare facility was established.

(2) The exclusion in subsection (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 or daycare facility is established.

(c)(1) It is not a violation of this section if the sex offender resides on property he or she owns prior to July 16, 2003.

(2) The exclusion in subsection (c)(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 July 16, 2003.

(d) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who knowingly violates a provision of this section is guilty of a Class D felony.

History. Acts 2003, No. 330, § 3.

5-14-129. Registered offender working with children prohibited.

(a) It is unlawful for 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 Level 3 or Level 4 offender to engage in an occupation or participate in a volunteer position that requires the sex offender to work or interact primarily and directly with a child under sixteen (16) years of age.

(b) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who knowingly violates this section is guilty of a Class D felony.

History. Acts 2005, No. 1779, § 1.

Subchapter 2.
Medical Records of Persons Charged with Sex Crimes.

5-14-201. Definitions.

As used in this subchapter:

- (1) "Relevant medical record" means a medical record of a person charged with having committed a sex crime that contain information that may reveal a health risk to the victim; and
- (2) "Sex crime" means any offense described in § 5-14-101 et seq. or § 5-70-101 et seq.

History. Acts 2001, No. 1709, § 1.

5-14-202. Access by prosecutors to medical records of persons charged with sex crimes - Victim notification of health risk.

(a)(1) Through a warrant issued by a judicial officer under Rule 13 of the Arkansas Rules of Criminal Procedure, a prosecuting attorney of this state is entitled access to a relevant medical record of any person charged with having committed a sex crime against another person, which act could have exposed the victim to a disease carried by the alleged offender.

(2)(A) An application by a prosecuting attorney for a relevant medical record shall describe with particularity the person whose relevant medical record is to be obtained and shall be supported by one (1) or more affidavits or recorded testimony before a judicial officer particularly setting forth the facts and circumstances tending to show that the person may present a danger to the health of a victim of a sex crime.

(B) If the judicial officer finds that the application meets the requirements of subdivision (a)(2)(A) of this section and that, on the basis of the proceeding before the judicial officer, there is reasonable cause to believe that the relevant medical record should be disclosed, the judicial officer shall issue a warrant directing disclosure of the medical record to the prosecuting attorney.

(b) Upon service of a warrant, a person having custody of a relevant medical record shall grant access to the prosecuting attorney and is not subject to any liability for granting the access.

(c)(1) If a prosecuting attorney after reviewing a medical record determines that a victim is subject to a health risk as a result of a sex crime, the prosecuting attorney may convey that health risk information to the victim, and the prosecuting attorney is not subject to any liability for disclosing that health risk information to the victim.

(2)(A) The prosecuting attorney may disclose the health risk information to the victim only.

(B) However, if the victim is a minor or is mentally incompetent, then the prosecuting attorney may disclose the health risk information to the victim's parent or legal guardian only.

(d) The prosecuting attorney is not subject to any liability to the victim for failing to obtain a medical record or failing to disclose health risk information to the victim.

(e) This subchapter does not repeal or supersede any rule of evidence or rule of criminal procedure that would allow the admissibility of a medical record as evidence in a criminal proceeding.

History. Acts 2001, No. 1709, § 2.

5-16-101. Crime of video voyeurism.

(a) It is unlawful to use any camera, videotape, photo-optical, photoelectric, or any other image recording device for the purpose of secretly observing, viewing, photographing, filming, or videotaping a person present in a residence, place of business, school, or other structure, or any room or particular location within that structure, if that person:

- (1) Is in a private area out of public view;
- (2) Has a reasonable expectation of privacy; and
- (3) Has not consented to the observation.

(b) A violation of this section is a Class D felony.

(c) The provisions of this section do not apply to any of the following:

(1) Video recording or monitoring conducted pursuant to a court order from a court of competent jurisdiction;

(2) Security monitoring operated by or at the direction of an occupant of a residence;

(3) Security monitoring operated by or at the direction of the owner or administrator of a place of business, school, or other structure;

(4) Security monitoring operated in a motor vehicle used for public transit;

(5) Security monitoring and observation associated with a correctional facility, regardless of the location of the monitoring equipment;

(6) Video recording or monitoring conducted by a law enforcement officer within the official scope of his or her duty; or

(7) Videotaping pursuant to § 12-12-508(b).

History. Acts 1999, No. 757, § 1; 2001, No. 532, § 1.

(a) As used in this section:

(1) "Nude or partially nude" means any person who has less than a fully opaque covering over the genitals, pubic area, or buttocks;

(2) "Private place" means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent; and

(3) "Public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility where a good, service, facility, privilege, advantage, or accommodation is offered, sold, or otherwise made available to the public.

(b) A person commits the offense of voyeurism if for the purpose of sexual arousal or gratification, he or she knowingly:

(1) Without the consent of each person who is present in the private place, looks into a private place that is, or is part of, a public accommodation and in which a person may reasonably be expected to be nude or partially nude; or

(2) Enters another person's private property without the other person's consent and looks into any person's dwelling unit if all of the following apply:

(A) The person looks into the dwelling with the intent to intrude upon or interfere with a person's privacy;

(B) The person looks into a part of the dwelling in which an individual is present;

(C) The individual present has a reasonable expectation of privacy in that part of the dwelling; and

(D) The individual present does not consent to the person's looking into that part of the dwelling.

(c)(1) Except as provided in subdivision (c)(2) of this section, a violation of this section is a Class A misdemeanor.

(2) A violation of this section is a Class D felony if:

(A) A victim is under seventeen (17) years of age; and

(B) The person who commits the offense holds a position of trust or authority over the victim.

History. Acts 2005, No. 1642, § 1.

5-25-101. Definitions.

As used in this subtitle:

(1) "Adult" means any person eighteen (18) years of age or older;

(2) "Deviate sexual activity" means any act of sexual gratification involving:

(A) The penetration, however slight, of the anus or mouth of a person by the penis of another person; or

(B) The penetration, however slight, of the labia majora or anus of a person by any body member of or foreign instrument manipulated by another person;

(3)(A) "Incompetent" means any person unable to care for himself or herself because of physical or mental disease or defect.

(B) The status embraced by "incompetent" may or may not exist regardless of any adjudication concerning incompetency;

(4) "Minor" means any person under eighteen (18) years of age; and

(5) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis.

History. Acts 1975, No. 280, § 2401; 1977, No. 360, § 11; A.S.A. 1947, § 41-2401; Acts 2005, No. 1994, § 291.

Amendments. The 2005 amendment substituted "labia majora" for "vagina" in (4) and (5)(B).

CASE NOTES

Cited: Ritter v. United States Fid. & Guar. Co., 573 F.2d 539 (8th Cir. 1978).

Chapter 26.
Offenses Involving The Family.

Subchapter 1. General Provisions [Repealed.]

Subchapter 2. Offenses Generally.

5-26-201. Bigamy.

5-26-202. Incest.

5-26-203. Concealing birth.

Subchapter 3. Domestic Battering and Assault.

5-26-301. Legislative intent.

5-26-302. Definitions.

5-26-303. Domestic battering in the first degree.

5-26-304. Domestic battering in the second degree.

5-26-305. Domestic battering in the third degree.

5-26-306. Aggravated assault on a family or household member.

5-26-307. First degree assault on family or household member.

5-26-308. Second degree assault on family or household member.

5-26-309. Third degree assault on a family or household member.

5-26-310. Costs.

5-26-311. Residential confinement in home of victim prohibited.

5-26-312. Determination of pregnancy.

Subchapter 4. Nonsupport.

5-26-401. Nonsupport.

5-26-402 - 5-26-409. [Reserved.]

5-26-410. Jurisdiction.

5-26-411. Evidence of marriage and parentage - Spouse as witness.

5-26-412. Payment of fine to spouse or guardian.

5-26-413. Temporary support order.

5-26-414. Order for periodic payments - Release of defendant on own recognizance.

5-26-415. Times when periodic payments may be authorized.

5-26-416. Violation of order - Forfeiture of recognizance.

Subchapter 5. Custody and Visitation.

5-26-501. Interference with visitation.

5-26-502. Interference with court-ordered custody.

(a) A person commits incest if the person, being sixteen (16) years of age or older, purports to marry, has sexual intercourse with, or engages in deviate sexual activity with another person sixteen (16) years of age or older whom the actor knows to be:

(1) An ancestor or a descendant;

- (2) A stepchild or adopted child;
- (3) A brother or sister of the whole or half blood;
- (4) An uncle, aunt, nephew, or niece; or
- (5) A stepgrandchild or adopted grandchild.

(b) A relationship referred to in this section includes a blood relationship without regard to legitimacy.

(c) Incest is a Class C felony.

History. Acts 1975, No. 280, § 2403; 1977, No. 360, § 12; 1985, No. 506, § 1; 1985, No. 916, § 1; A.S.A. 1947, § 41-2403; Acts 1997, No. 1321, § 1; 2003, No. 1469, § 1.

Subchapter 3. Domestic Battering and Assault.

5-26-301. Legislative intent.

To the extent that any protected class of persons defined under this subchapter is afforded protection by any other existing or future statute of this state, this subchapter does not prevent a prosecution under any such existing or future statute.

History. Acts 1995, No. 1291, § 8.

5-26-302. Definitions.

As used in this subchapter:

(1)(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals that is determined by examining the following factors:

- (i) The length of the relationship;
- (ii) The type of the relationship; and
- (iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" does not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context; and

(2) "Family or household member" means:

(A) A spouse;

(B) A former spouse;

(C) A parent;

(D) A child, including any minor residing in the household;

(E)(i) Persons related by blood within the fourth degree of consanguinity.

(ii) The degree of consanguinity is computed pursuant to § 28-9-212;

(F) Persons who presently or in the past have resided or cohabited together;

(G) Persons who have or have had a child in common; or

(H) Persons who are presently or in the past have been in a dating relationship together.

History. Acts 1995, No. 1291, § 8; 1999, No. 1317, § 1; 2001, No. 1678, § 2; 2005, No. 1875, § 2.

5-26-303. Domestic battering in the first degree.

(a) A person commits domestic battering in the first degree if:

(1) With the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon;

(2) With the purpose of seriously and permanently disfiguring a family or household member or of destroying, amputating, or permanently disabling a member or organ of a family or household member's body, the person causes such an injury to a family or household member; or

(3) The person causes serious physical injury to a family or household member under circumstances manifesting extreme indifference to the value of human life.

(b)(1) Domestic battering in the first degree is a Class B felony.

(2) However, domestic battering in the first degree is a Class A felony upon a conviction pursuant to subsection (a) of this section if:

(A) Committed against a woman the person knew or should have known was pregnant;

(B) For conduct that occurred within the five (5) years preceding the commission of the current offense, the person has been convicted of a prior offense of:

(i) Domestic battering in the first degree;

(ii) Domestic battering in the second degree, § 5-26-304;

(iii) Domestic battering in the third degree, § 5-26-305; or

(iv) An equivalent penal law of this state or of another state or foreign jurisdiction.

History. Acts 1979, No. 396, § 1; A.S.A. 1947, § 41-1653; Acts 1995, No. 1291, § 1; 1999, No. 1317, § 2; 1999, No. 1365, § 1; 2001, No. 1553, § 8; 2003, No. 944, § 1; 2003, No. 1079, § 1; 2005, No. 1994, § 481.

5-26-304. Domestic battering in the second degree.

(a) A person commits domestic battering in the second degree if:

(1) With the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member;

(2) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a deadly weapon; or

(3) The person recklessly causes serious physical injury to a family or household member by means of a deadly weapon.

(b)(1) Domestic battering in the second degree is a Class C felony.

(2) However, domestic battering in the second degree is a Class B felony if:

(A) Committed against a woman the person knew or should have known was pregnant;

(B) For conduct that occurred within the five (5) years preceding the commission of the current offense, the person has been convicted of a prior offense of:

- (i) Domestic battering in the first degree, § 5-26-303;
- (ii) Domestic battering in the second degree;
- (iii) Domestic battering in the third degree, § 5-26-305; or
- (iv) An equivalent penal law of this state or of another state or foreign jurisdiction; or

(C) For conduct that occurred within the ten (10) years preceding the commission of the current offense, the person has on two (2) previous occasions been convicted of any act of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction.

History. Acts 1979, No. 396, § 2; A.S.A. 1947, § 41-1654; Acts 1995, No. 1291, § 2; 1999, No. 1365, § 2; 2001, No. 1553, § 9; 2003, No. 944, § 2; 2003, No. 1079, § 1; 2005, No. 1994, § 481.

5-26-305. Domestic battering in the third degree.

(a) A person commits domestic battering in the third degree if:

(1) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member;

(2) The person recklessly causes physical injury to a family or household member;

(3) The person negligently causes physical injury to a family or household member by means of a deadly weapon; or

(4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to a family or household member by administering to the family or household member, without the family or household member's consent, any drug or other substance.

(b)(1) Domestic battering in the third degree is a Class A misdemeanor.

(2) However, domestic battering in the third degree is a Class D felony if:

(A) Committed against a woman the person knew or should have known was pregnant;

(B) For conduct that occurred within the five (5) years preceding the commission of the current offense, the person has been convicted of a prior offense of:

- (i) Domestic battering in the first degree, § 5-26-303;
- (ii) Domestic battering in the second degree, § 5-26-304;
- (iii) Domestic battering in the third degree; or
- (iv) An equivalent penal law of this state or of another state or foreign jurisdiction; or

(C) For conduct that occurred within the ten (10) years preceding the commission of the current offense, the person has on two (2) previous occasions been convicted of any act of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction.

History. Acts 1979, No. 396, § 3; A.S.A. 1947, § 41-1655; Acts 1995, No. 1291, § 3; 1999, No. 1365, § 3; 2001, No. 1553, § 10; 2003, No. 944, § 3; 2003, No. 1079, § 1; 2005, No. 1994, § 481.

5-26-306. Aggravated assault on a family or household member.

(a) A person commits aggravated assault on a family or household member if, under circumstances manifesting extreme indifference to the value of human life, the person purposely engages in conduct that creates a substantial danger of death or serious physical injury to a family or household member.

(b) Aggravated assault on a family or household member is a Class D felony.

History. Acts 1979, No. 396, § 4; A.S.A. 1947, § 41-1656; Acts 1995, No. 1291, § 4.

5-26-307. First degree assault on family or household member.

(a) A person commits first degree assault on a family or household member if the person recklessly engages in conduct that creates a substantial risk of death or serious physical injury to a family or household member.

(b) First degree assault on a family or household member is a Class A misdemeanor.

History. Acts 1979, No. 396, § 5; A.S.A. 1947, § 41-1657; Acts 1995, No. 1291, § 5.

5-26-308. Second degree assault on family or household member.

(a) A person commits second degree assault on a family or household member if the person recklessly engages in conduct that creates a substantial risk of physical injury to a family or household member.

(b) Second degree assault on a family or household member is a Class B misdemeanor.

History. Acts 1979, No. 396, § 6; A.S.A. 1947, § 41-1658; Acts 1995, No. 1291, § 6.

5-26-309. Third degree assault on a family or household member.

(a) A person commits third degree assault on a family or household member if the person purposely creates apprehension of imminent physical injury to a family or household member.

(b) Third degree assault on a family or household member is a Class C misdemeanor.

History. Acts 1979, No. 396, § 7; A.S.A. 1947, § 41-1659; Acts 1995, No. 1291, § 7.

5-26-310. Costs.

(a) The abused in any misdemeanor or felony domestic violence offense shall not bear the costs associated with the filing of a criminal charge against the domestic violence offender or the costs associated with the issuance or service of a warrant and witness subpoena, except as provided in subsection (b) of this section.

(b) Nothing in this section shall be construed to prohibit a judge from assessing costs if an allegation of abuse is determined to be false.

(c)(1) Upon entering a plea of guilty or nolo contendere or being found guilty, a defendant violating § 5-26-303 - 5-26-305 or §§ 5-26-307 - 5-26-309 may be required to reimburse any abuse shelter or other entity providing a service to the victim under a provision of the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq., if some proof of expense is provided in conjunction with the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq.

(2)(A) If the defendant maintains the home in which the abuse occurred and the victim will continue to incur lodging costs, the defendant may be ordered to continue to provide

remuneration for the victim's lodging under a provision of the Arkansas Crime Victims Reparations Act, § 16-90-701 et seq., until an action is commenced in a court of competent jurisdiction.

(B) Nothing in this section conflicts with or preempt any order of a judge in a divorce, custody, separate maintenance, or other related action to dissolve a marriage.

(d) Nothing in this section conflicts with or preempts a provision of § 16-90-703.

History. Acts 1995, No. 401, § 1; 2003, No. 1770, § 1.

5-26-311. Residential confinement in home of victim prohibited.

In a case involving domestic or family violence, a court shall not order residential confinement as a condition of bond or probation for a defendant in any household shared by the defendant and the alleged victim.

History. Acts 1999, No. 1317, § 3.

Chapter 27. Offenses Against Children or Incompetents.

Subchapter 1. General Provisions [Repealed.]

Subchapter 2. Offenses Generally.

5-27-201. Endangering the welfare of an incompetent person in the first degree.

5-27-202. Endangering the welfare of an incompetent person in the second degree.

5-27-203. Endangering the welfare of an incompetent person in the third degree.

5-27-204. [Transferred.]

5-27-205. Endangering the welfare of a minor in the first degree.,

5-27-206. Endangering the welfare of a minor in the second degree.

5-27-207. Endangering the welfare of a minor in the third degree.

5-27-208. [Reserved.]

5-27-209. Contributing to the delinquency of a minor.

5-27-210. Parental responsibility for student's firearm possession.

5-27-211 - 5-27-219. [Reserved.]

- 5-27-220. Contributing to the delinquency of a juvenile.
- 5-27-221. Permitting abuse of a minor.
- 5-27-222. Neglect of minor resulting in delinquency.
- 5-27-223. [Repealed.]
- 5-27-224. [Repealed.]
- 5-27-225. [Repealed.]
- 5-27-226. [Repealed.]
- 5-27-227. Providing minors with tobacco products and cigarette papers - Purchase, use, or possession prohibited - Placement of tobacco vending machines.
- 5-27-228. [Repealed.]
- 5-27-229. Soliciting money or property from incompetents.
- 5-27-230. Exposing a child to a chemical substance or methamphetamine.
- 5-27-231, 5-27-232. [Transferred.]

Subchapter 3. Arkansas Protection of Children Against Exploitation Act of 1979.

- 5-27-301. Title.
- 5-27-302. Definitions.
- 5-27-303. Engaging children in sexually explicit conduct for use in visual or print medium.
- 5-27-304. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child.
- 5-27-305. Transportation of minors for prohibited sexual conduct.
- 5-27-306. Internet stalking of a child.

Subchapter 4. Use of Children in Sexual Performances.

- 5-27-401. Definitions.
- 5-27-402. Employing or consenting to the use of a child in a sexual performance.
- 5-27-403. Producing, directing, or promoting a sexual performance by a child.
- 5-27-404. Good faith defense.
- 5-27-405. Determination of age of person.

Subchapter 5. Fraudulent Identification Documents for Minors.

- 5-27-501. Purposes.
- 5-27-502. Manufacturing or altering personal identification document unlawful.
- 5-27-503. Possession of fraudulent or altered personal identification document unlawful.
- 5-27-504. Denial of driving privileges.

Subchapter 6. Computer Crimes Against Minors.

- 5-27-601. Definitions.
- 5-27-602. Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child.
- 5-27-603. Computer child pornography.
- 5-27-604. Failure to report computer child pornography.
- 5-27-605. Computer exploitation of a child.

5-27-606. Jurisdiction.

5-27-607. Determination of age of person.

5-27-608. Applicability of this subchapter to interactive computer service and electronic mail service providers.

(a) A person commits the offense of endangering the welfare of an incompetent person in the first degree if, being a parent, guardian, person legally charged with care or custody of an incompetent person, or a person charged with supervision of an incompetent person, he or she purposely:

(1) Engages in conduct creating a substantial risk of death or serious physical injury to an incompetent person; or

(2) Deserts the incompetent person under circumstances creating a substantial risk of death or serious physical injury.

(b) Endangering the welfare of an incompetent person in the first degree is a Class D felony.

History. Acts 1975, No. 280, § 2409; A.S.A. 1947, § 41-2409; Acts 2005, No. 2216, § 1.

(a)(1) A person commits the offense of endangering the welfare of an incompetent person in the second degree if he or she knowingly engages in conduct creating a substantial risk of serious harm to the physical or mental welfare of a person known by the actor to be an incompetent person.

(2) As used in this section, "serious harm to the physical or mental welfare of a person" means physical or mental injury that causes:

(A) Protracted disfigurement;

(B) Protracted impairment of physical or mental health; or

(C) Loss or protracted impairment of the function of any bodily member or organ.

(b) Endangering the welfare of an incompetent person in the second degree is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2410; A.S.A. 1947, § 41-2410; Acts 2005, No. 2216, § 2.

(a)(1) A person commits the offense of endangering the welfare of an incompetent person in the third degree if the person recklessly engages in conduct creating a substantial risk of serious harm to the physical or mental welfare of a person known by the actor to be an incompetent

person.

(2) As used in this section, "serious harm to the physical or mental welfare of a person" means physical or mental injury that causes

- (A) Protracted disfigurement;
- (B) Protracted impairment of physical or mental health; or
- (C) Loss or protracted impairment of the function of any bodily member or organ.

(b) Endangering the welfare of an incompetent person in the third degree is a Class B misdemeanor.

History. Acts 2005, No. 2216, § 3.

(a) A person commits the offense of endangering the welfare of a minor in the first degree if, being a parent, guardian, person legally charged with care or custody of a minor, or a person charged with supervision of a minor, he or she purposely:

(1) Engages in conduct creating a substantial risk of death or serious physical injury to a minor; or

(2) Deserts a minor less than ten (10) years old under circumstances creating a substantial risk of death or serious physical injury.

(b) Endangering the welfare of a minor in the first degree is a Class D felony.

(c)(1) It is an affirmative defense to a prosecution under this section that a parent voluntarily delivered a child to and left the child with, or voluntarily arranged for another person to deliver a child to and leave the child with, a medical provider or law enforcement agency as provided in § 9-34-201 et seq.

(2)(A) Nothing in subdivision (c)(1) of this section shall be construed to create a defense to any prosecution arising from any conduct other than the act of delivering a child as described in subdivision (c)(1) of this section.

(B) Subdivision (c)(1) of this section specifically does not constitute a defense to any prosecution arising from an act of abuse or neglect committed prior to the delivery of a child to a medical provider or law enforcement agency as provided in § 9-34-201 et seq.

History. Acts 1975, No. 280, § 2407; A.S.A. 1947, § 41-2407; Acts 2001, No. 236, § 2; 2005, No. 2207, § 1.

(a)(1) A person commits the offense of endangering the welfare of a minor in the second degree if he or she knowingly engages in conduct creating a substantial risk of serious harm to the physical or mental welfare of another person known by the person to be a minor.

(2) As used in this section, "serious harm to the physical or mental welfare" means physical or mental injury that causes:

- (A) Protracted disfigurement;
 - (B) Protracted impairment of physical or mental health; or
 - (C) Loss or protracted impairment of the function of any bodily member or organ.
- (b) Endangering the welfare of a minor in the second degree is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2408; A.S.A. 1947, § 41-2408; Acts 2005, No. 2207, § 2.

(a)(1) A person commits the offense of endangering the welfare of a minor in the third degree if the person recklessly engages in conduct creating a substantial risk of serious harm to the physical or mental welfare of a person known by the actor to be a minor.

(2) As used in this section, "serious harm to the physical or mental welfare" means physical or mental injury that causes:

- (A) Protracted disfigurement;
 - (B) Protracted impairment of physical or mental health; or
 - (C) Loss or protracted impairment of the function of any bodily member or organ.
- (b) Endangering the welfare of a minor in the third degree is a Class B misdemeanor.

History. Acts 2005, No. 2207, § 3.

(a) A person commits the offense of contributing to the delinquency of a minor if, being an adult, the person knowingly aids, causes, or encourages a minor to:

- (1) Do any act prohibited by law;
- (2) Do any act that if done by an adult would render the adult subject to a prosecution for an offense punishable by imprisonment;
- (3) Habitually absent himself or herself, without good or sufficient cause, from the minor's home without the consent of the minor's parent, stepparent, foster parent, guardian, or other

lawful custodian;

(4) Habitually absent himself or herself from school when required by law to attend school;
or

(5) Habitually disobey a reasonable and lawful command of the minor's parent, stepparent, foster parent, guardian, or other lawful custodian.

(b) Contributing to the delinquency of a minor is a Class A misdemeanor.

History. Acts 1975, No. 280, § 2406; A.S.A. 1947, § 41-2406.

(a) As used in this section:

(1) "Firearm" means:

(A) Any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable; or

(B) Components that can readily be assembled into a device described in subdivision (a)(1)(A) of this section; and

(2) "Parent" means a parent, stepparent, legal guardian, or person in loco parentis or who has legal custody of a student pursuant to a court order and with whom the student resides.

(b) A parent of a minor is guilty of a Class B misdemeanor if:

(1) The parent knows that the minor is in illegal possession of a firearm in or upon:

(A) The premises of a public or private school;

(B) A public or private school's athletic stadium or other facility or building in which school-sponsored events are conducted; or

(C) A public park, playground, or civic center; and

(2) The parent fails to:

(A) Prevent the illegal possession; or

(B) Report the illegal possession to an appropriate school or law enforcement official.

History. Acts 1999, No. 1149, §§ 1, 2.

(a) A person is guilty of a Class A misdemeanor if the person willfully causes, aids, or encourages any minor to do or perform any act which, if done or performed, would make the minor a delinquent juvenile or juvenile in need of supervision within the meaning of this section and the Arkansas Juvenile Code of 1989, § 9-27-301 et seq.

(b) A judge may issue a bench warrant for the arrest of an adult in which there is probable cause to believe the adult is committing an offense under this section, returnable to either the district court or the circuit court of the county where the offense was committed.

(c) Any indictment or information under this section shall state the specific act the defendant is alleged to have committed.

(d)(1) Any person convicted of a violation of this section may be punished as provided for a Class A misdemeanor.

(2) However, the court may suspend or postpone enforcement of any part of the sentence or fine levied under this section if in the judgment of the court the suspension or postponement is in the best interest of the minor that was caused, aided, or encouraged.

History. Acts 1975, No. 451, § 45; A.S.A. 1947, § 45-445; Acts 2005, No. 1994, § 344.

(a) A person commits the offense of permitting abuse of a minor if, being a parent, guardian, or person legally charged with the care or custody of a minor, he or she recklessly fails to take action to prevent the abuse of a minor.

(b) It is a defense to a prosecution for the offense of permitting abuse of a minor if the parent, guardian, or person legally charged with the care or custody of the minor takes immediate steps to end the abuse of the minor, including prompt notification of a medical or law enforcement authority, upon first knowing or having good reason to know that abuse has occurred.

(c) Permitting abuse of a minor is a:

(1) Class B felony if the abuse of the minor:

(A) Consisted of sexual intercourse;

(B) Consisted of deviate sexual activity; or

(C) Caused serious physical injury or death to the minor; or

(2) Class D felony if the abuse of the minor:

(A) Consisted of sexual contact; or

(B) Caused physical injury to the minor.

(d) As used in this section:

(1) "Abuse" means only sexual intercourse, deviate sexual activity, sexual contact, or causing physical injury, serious physical injury, or death, which could be prosecuted as a delinquent or criminal act; and

(2) "Minor" means a person under eighteen (18) years of age.

History. Acts 1985, No. 990, §§ 1-3; A.S.A. 1947, §§ 41-2472 - 41-2474; Acts 1993, No. 1126, § 9; 2001, No. 1374, § 1; 2003, No. 1318, § 1.

A parent or person standing in loco parentis to a minor is guilty of a violation and upon conviction shall be punished by a fine not to exceed two hundred fifty dollars (\$250), if the parent's or person's gross neglect of a parental duty with reference to the minor:

(1) Proximately results in the delinquency of the minor; or

(2) Fails to correct the delinquency of the minor.

History. Acts 1963, No. 109, § 1; A.S.A. 1947, § 41-2471; Acts 2005, No. 1994, § 44.

(a) It is unlawful for any person to give, barter, or sell to a minor:

(1) Tobacco in any form; or

(2) A cigarette paper.

(b) It is unlawful for any minor:

(1) Unless acting as an agent of the minor's employer within the scope of employment, to use or possess:

(A) Tobacco in any form; or

(B) A cigarette paper;

(2) To purchase or attempt to purchase:

(A) Tobacco in any form; or

(B) A cigarette paper; or

(3) For the purpose of obtaining or attempting to obtain tobacco in any form or a cigarette paper, to use any:

(A) Falsified identification; or

(B) Identification other than his or her own.

(c)(1) It is not an offense under subdivisions (b)(1) or (2) of this section if a minor was acting at the direction of an employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with a law relating to the prohibition of the sale of tobacco in any form or a cigarette paper to a minor.

(2) Any minor used in the manner described in subdivision (c)(1) of this section by a governmental agency shall display the appearance of a minor.

(3)(A) If questioned by a retailer or an agent or employee of a retailer about his or her age, the minor shall state his or her actual age and shall present a true and correct identification if verbally asked to present it.

(B) If verbally asked for it, any failure on the part of the minor to provide true and correct identification is a defense to any action pursuant to this section or a civil action under § 26-57-257.

(4) No minor is subject to arrest or search by any law enforcement officer merely on the ground that the minor has or may have possession of tobacco or a cigarette paper.

(d) No person shall engage or direct a minor to violate any provision of this section for purposes of determining compliance with a provision of this section unless the person has procured the written consent of a parent or guardian of the minor to so engage or direct the minor and the person is:

(1) An officer having authority to enforce a provision of this section;

(2) An employee of the Arkansas Tobacco Control Board or a prosecuting attorney;

(3) An authorized representative of a business acting pursuant to a self-compliance program designed to increase compliance with this section;

(4) An employee or authorized representative of the Department of Health and Human Services; or

(5) An employee or authorized agent of a governmental agency authorized to enforce or ensure compliance with a provision of this section.

(e) Any person who sells tobacco in any form or a cigarette paper has the right to deny the sale of any tobacco in any form or a cigarette paper to any person.

(f) It is unlawful for any person who has been issued a permit or a license under the Arkansas

Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to fail to display in a conspicuous place or on each vending machine a sign indicating that the sale of tobacco products to or purchase or possession of tobacco products by a minor is prohibited by law.

(g) It is unlawful for any manufacturer whose tobacco product is distributed in this state and any person who has been issued a permit or license under the Arkansas Tobacco Products Tax Act of 1977, § 26-57-201 et seq., to distribute a free sample of any tobacco product or coupon that entitles the holder of the coupon to any free sample of any tobacco product:

(1) In or on any public street or sidewalk within five hundred feet (500') of any playground, public school, or other facility when the playground, public school, or other facility is being used primarily by minors for recreational, educational, or other purposes; or

(2) To any minor.

(h)(1)(A) Except as provided in subdivision (h)(2) of this section, it is unlawful for any person who owns or leases a tobacco vending machine to place a tobacco vending machine in a public place.

(B) As used in subdivision (h)(1)(A) of this section, "public place" means a publicly or privately owned place to which the public or a substantial number of people have access.

(2) A tobacco vending machine may be placed in a:

(A) Restricted area within a factory, business, office, or other structure to which a member of the general public is not given access;

(B) Permitted premises that has a permit for the sale or dispensing of an alcoholic beverage for on-premises consumption that restrict entry to a person twenty-one (21) years of age or older; or

(C) Place where the tobacco vending machine is under the supervision of the owner or an employee of the owner.

(i)(1) Any retail permit holder or license holder who violates any provision in this section is deemed guilty of a violation and subject to the following penalties:

(A) If the alleged violator has received a notice of an alleged violation from the Arkansas Tobacco Control Board or other agency or official with the authority to assess a penalty containing the information specified in this subchapter, a fine not to exceed two hundred fifty dollars (\$250) for a first violation within a forty-eight month period;

(B) For a second violation within a forty-eight month period:

(i) A fine not to exceed five hundred dollars (\$500); and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed two (2) days;

(C) For a third violation within a forty-eight month period:

(i) A fine not to exceed one thousand dollars (\$1,000); and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed seven (7) days;

(D) For a fourth or subsequent violation within a forty-eight month period:

(i) A fine not to exceed two thousand dollars (\$2,000); and

(ii) Suspension of the license or permit enumerated in § 26-57-219 for a period not to exceed fourteen (14) days; and

(E) For a fifth violation within a forty-eight month period, the license or permit enumerated in § 26-57-219 may be revoked.

(2) Upon any revocation or suspension of a permit or license under a provision of subdivision (i)(1) of this section, the person shall not be issued any new permit or license to distribute or sell a tobacco product during the period of suspension or revocation.

(j)(1) A notice of alleged violation of this section shall be given to the holder of a retail permit or license within ten (10) days of the alleged violation.

(2)(A) The notice shall contain the date and time of the alleged violation.

(B)(i) The notice shall also include either the name of the person making the alleged sale or information reasonably necessary to determine the location in the store that allegedly made the sale.

(ii) When appropriate, information under subdivision (j)(2)(B)(i) of this section should include, but not be limited to, the:

(a) Cash register number;

(b) Physical location of the sale in the store; and

(c) If possible, the lane or aisle number.

(k) Notwithstanding the provisions of subsection (i) of this section, the court shall consider the following factors when reviewing a possible violation:

(1) The business has adopted and enforced a written policy against selling cigarettes or tobacco products to minors;

(2) The business has informed its employees of the applicable laws regarding the sale of

cigarettes and tobacco products to minors;

(3) The business has required employees to verify the age of a cigarette or tobacco product customer by way of photographic identification;

(4) The business has established and imposed disciplinary sanctions for noncompliance; and

(5) That the appearance of the purchaser of the tobacco in any form or cigarette papers was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase.

(l) Any cigarette or tobacco product found in the possession of a minor may be confiscated.

(m) An employee of a permit holder who violates § 5-27-227 is subject to a fine not to exceed one hundred dollars (\$100) per violation.

(n) A person convicted of violating any provision of this section whose permit or license to distribute or sell a tobacco product is suspended or revoked upon conviction shall surrender to the court any permit or license to distribute or sell a tobacco product and the court shall transmit the permit or license to distribute or sell a tobacco product to the Director of the Department of Finance and Administration and instruct the Director of the Arkansas Tobacco Control Board:

(1) To suspend or revoke the person's permit or license to distribute or sell a tobacco product and to not renew the permit or license; and

(2) Not to issue any new permit or license to that person for the period of time determined by the court in accordance with this section.

History. Acts 1929, No. 152, § 26; Pope's Dig., § 13557; A.S.A. 1947, § 41-2465; Acts 1991, No. 543, § 1; 1997, No. 1337, § 24; 1999, No. 1591, §§ 1, 3; 2003, No. 846, § 1.

(a) As used in this section:

(1)(A) "Chemical substance" means a substance intended to be used as a precursor in the manufacture of methamphetamine, or any other chemical intended to be used in the manufacture of methamphetamine.

(B) Intent may be demonstrated by the substance's:

(i) Use;

(ii) Quantity;

(iii) Manner of storage; or

(iv) Proximity to another precursor or equipment used to manufacture methamphetamine;

(2) "Child" means any person under eighteen (18) years of age; and

(3) "Methamphetamine" has the same meaning as provided in the Uniform Controlled Substances Act, § 5-64-101 et seq.

(b)(1) Any adult who, with the intent to manufacture methamphetamine, knowingly causes or permits a child to be exposed to, ingest, inhale, or have any contact with a chemical substance or methamphetamine is guilty of a Class C felony.

(2) Any adult who violates subdivision (b)(1) of this section is guilty of a Class B felony if a child suffers physical injury or serious physical injury because of the violation.

History. Acts 2003, No. 930, § 1.

Subchapter 3. Arkansas Protection of Children Against Exploitation Act of 1979.

5-27-301. Title.

This subchapter may be cited as the "Arkansas Protection of Children Against Exploitation Act of 1979".

History. Acts 1979, No. 499, § 1; A.S.A. 1947, § 41-4201.

5-27-302. Definitions.

As used in this subchapter:

(1) "Child" means any person under seventeen (17) years of age;

(2) "Commercial exploitation" means having monetary or other material gain as a direct or

indirect goal.

(3) "Producing" means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Sadoomasochistic abuse for the purpose of sexual stimulation; or

(E) Lewd exhibition of:

(i) The genitals or pubic area of any person; or

(ii) The breast of a female; and

(5) "Visual or print medium" means any film, photograph, negative, slide, book, magazine, or other visual or print medium other than material specifically used by a licensed medical and/or mental health professional for the purpose of assessment, evaluation, and treatment of a sex offender.

History. Acts 1979, No. 499, § 2; A.S.A. 1947, § 41-4202; Acts 1995, No. 1209, § 1.

5-27-303. Engaging children in sexually explicit conduct for use in visual or print medium.

(a) Any person who employs, uses, persuades, induces, entices, or coerces any child to engage in or who has a child assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

(1) Class B felony for the first offense; and

(2) Class A felony for a subsequent offense.

(b) Any parent, legal guardian, or person having custody or control of a child who knowingly permits the child to engage in or to assist any other person to engage in sexually explicit conduct

for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

- (1) Class B felony for the first offense; and
- (2) Class A felony for a subsequent offense.

History. Acts 1979, No. 499, § 3; A.S.A. 1947, § 41-4203; Acts 2003, No. 1087, § 1.

5-27-304. Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child.

(a) With knowledge of the character of the visual or print medium involved, no person shall do any of the following:

(1) Knowingly advertise for sale or distribution, sell, distribute, transport, ship, exhibit, display, or receive for the purpose of sale or distribution any visual or print medium depicting a child participating or engaging in sexually explicit conduct; or

(2) Knowingly solicit, receive, purchase, exchange, possess, view, distribute, or control any visual or print medium depicting a child participating or engaging in sexually explicit conduct.

(b) Any person who violates subdivisions (a)(1) or (2) of this section is guilty of a:

- (1) Class C felony for the first offense; and
- (2) Class B felony for a subsequent offense.

History. Acts 1979, No. 499, § 4; A.S.A. 1947, § 41-4204; Acts 1991, No. 607, § 1.

5-27-305. Transportation of minors for prohibited sexual conduct.

Any person is guilty of a Class C felony who transports, finances in whole or part the transportation of, or otherwise causes or facilitates the movement of any minor, if the actor:

(1) Knows or has reason to know that prohibited sexual conduct will be commercially exploited by any person; and

(2) Intends that the minor engage in: