

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997

A Bill

HOUSE BILL 1989

4
5 By: Representative Judy Smith

For An Act To Be Entitled

9 "AN ACT TO BE ENTITLED THE CHILD PHYSICAL AND SEXUAL ABUSE
10 VICTIM PROTECTION ACT ; AND FOR OTHER PURPOSES."

Subtitle

13 "THE CHILD PHYSICAL AND SEXUAL ABUSE
14 VICTIM PROTECTION ACT."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 SECTION 1. Short Title.

19 This act shall be entitled "The Child Physical and Sexual Abuse Victim
20 Protection Act."

22 SECTION 2. Definitions.

23 As used in this act, "a child physical offense, sex offense, or
24 exploitative offense" means the following crimes, when one (1) or more of the
25 victims or witnesses, is a child twelve (12) years of age or younger:

26 (1) Capital murder - A.C.A. § 5-10-101;

27 (2) Murder in the first degree and second degree - A.C.A. §§ 5-10-102
28 and 5-10-103;

29 (3) Kidnapping - A.C.A. 5-11-102;

30 (4) Battery in the first degree, second degree, and third degree -
31 A.C.A. §§ 5-13-201, 5-13-202, and 5-13-203;

32 (5) Aggravated assault - A.C.A. § 5-13-204;

33 (6) Coercion - A.C.A. § 5-13-208;

34 (7) Terroristic threatening - A.C.A. § 5-13-301;

35 (8) Rape - A.C.A. § 5-14-103;

36 (9) Carnal abuse in the first degree, second degree, and third degree -

- 1 A.C.A. §§ 5-14-104, 5-14-105, and 5-14-106;
 2 (10) Sexual abuse in the first degree - A.C.A. § 5-14-108;
 3 (11) Sexual solicitation of a child - A.C.A. § 5-14-110;
 4 (12) Violation of a minor in the first degree and second degree, A.C.A.
 5 §§ 5-14-120 and 5-14-121;
 6 (13) Incest - A.C.A. § 5-26-202;
 7 (14) Engaging children in sexually explicit conduct for use in visual
 8 or print media, or transportation of minors for prohibited sexual conduct, or
 9 employing or consenting to use of a child in sexual performance, or producing,
 10 directing, or promoting a sexual performance by a child - A.C.A. §§ 5-27-303,
 11 5-27-305, 5-27-402, and 5-27-403;
 12 (15) Promoting prostitution in the first degree - A.C.A. § 5-70-104;
 13 and
 14 (16) Criminal attempt, criminal complicity, criminal solicitation, or
 15 criminal conspiracy - A.C.A. §§ 5-3-210, 5-3-202, 5-3-301, and 5-3-401, to
 16 commit any of the offenses listed in this section.

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 18 SECTION 3. Out-of-Court statement -- When admissible.

19 An out-of-court statement concerning an act that is a material element
 20 of any crime involving a child physical offense, sex offense, or exploitative
 21 offense, made by a child, who is, at the time of the proceeding, under twelve
 22 (12) years of age, is admissible in criminal proceedings, if the requirements
 23 of Section 4 are met.

24
 25 SECTION 4. Out-of-court statement -- Requirements for admissibility.

26 An out-of-court statement may be admitted as provided in Section 3, if:

27 (1) The child testifies at the proceeding, or testifies by means of
 28 video tape deposition, or testifies by means of closed circuit television, and
 29 at the time of such testimony is subject to cross-examination about the out-
 30 of-court statements; or

31 (2)(A) The child is found by the court to be unavailable to testify on
 32 any of these grounds:

33 (1) The child's death;

34 (2) The court finds that there are reasonable grounds to
 35 believe that the defendant or someone acting on behalf of the defendant has
 36 intentionally removed the child from the jurisdiction of the court;

1 (3) The child's total failure of memory;
 2 (4) The child's physical or mental disability;
 3 (5) The child's incompetency, including the child's
 4 inability to communicate about the offense because of fear or a similar
 5 reason; or

6 (6) Substantial likelihood that the child would suffer
 7 severe emotional trauma from testifying at the proceeding or by means of
 8 closed circuit television; and

9 (B) The child's out-of-court statement is shown to the reasonable
 10 satisfaction of the court to possess particularized guarantees of
 11 trustworthiness.

12

13 SECTION 5. Expert testimony as to unavailability of child to testify.
 14 A finding of unavailability under Section 4(2)(A), (3), (4), (5), and
 15 (6) shall be supported by expert testimony.

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17 SECTION 6. Factors in considering trustworthiness of statement.

18 In determining whether a statement possesses particularized guarantees
 19 of trustworthiness under Section 4(2)(b), the court may consider any one, but
 20 is not limited to, the following factors:

21 (1) The child's personal knowledge of the event;

22 (2) The age and maturity of the child;

23 (3) Certainty to the court that the statement was made, including the
 24 credibility of the person testifying about the statement;

25 (4) Any apparent motive the child may have to falsify or distort the
 26 event, including bias, corruption, or coercion;

27 (5) The timing of the child's statement;

28 (6) Whether more than one (1) person heard the statement;

29 (7) Whether the child was suffering from pain or distress when making
 30 the statement;

31 (8) The nature and duration of any alleged abuse;

32 (9) Whether the child's young age makes it unlikely that the child
 33 fabricated a statement that represents a graphic, detailed account beyond the
 34 child's knowledge and experience;

35 (10) Whether the statement has a "ring of verity," has an internal
 36 consistency or coherence, and uses terminology appropriate to the child's age;

1 and

2 (11) Whether extrinsic evidence exists to show the defendant s
3 opportunity to commit the act complained of in the child s statement.

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5 SECTION 7. Notice to adverse party.

6 The proponent of the statement must inform the adverse party of the
7 opponents intention to offer the statement and the content of the statement
8 sufficiently in advance of the proceeding to provide the defendant with a fair
9 opportunity to prepare a response to the statement before the proceeding at
10 which it is offered.

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12 SECTION 8. Effect upon otherwise admissible out-of-court statements.

13 Nothing contained in this article shall be construed to limit or prevent
14 the admissibility of any out-of-court statement that would be admissible if
15 this act did not exist.

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17 SECTION 9. All provisions of this act of a general and permanent nature
18 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
19 Revision Commission shall incorporate the same in the Code.

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21 SECTION 10. If any provision of this act or the application thereof to
22 any person or circumstance is held invalid, such invalidity shall not affect
23 other provisions or applications of the act which can be given effect without
24 the invalid provision or application, and to this end the provisions of this
25 act are declared to be severable.

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27 SECTION 11. All laws and parts of laws in conflict with this act are
28 hereby repealed.

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