

State of Arkansas  
93rd General Assembly  
Regular Session, 2021

# A Bill

HOUSE BILL 1742

By: Representative Lundstrum

## For An Act To Be Entitled

AN ACT CONCERNING SEXUAL ACTS WITH A MINOR;  
CONCERNING THE AGE AT WHICH A MINOR MAY LAWFULLY  
CONSENT TO A SEXUAL ACT; AND FOR OTHER PURPOSES.

## Subtitle

CONCERNING SEXUAL ACTS WITH A MINOR;  
CONCERNING THE AGE AT WHICH A MINOR MAY  
LAWFULLY CONSENT TO A SEXUAL ACT.

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

SECTION 1. Arkansas Code §§ 5-14-124 through 5-14-127 are amended to  
read as follows:

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

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

(1) The person engages in sexual intercourse or deviate sexual  
activity with a minor who is not the actor's spouse and the actor is:

(A) Employed with the Division of Correction, the Division  
of Community Correction, the Department of Human Services, or any city or  
county jail or a juvenile detention facility, and the victim is in the  
custody of the Division of Correction, the Division of Community Correction,  
the ~~Department of Human Services~~ department, any city or county jail or  
juvenile detention facility, or their contractors or agents;

(B) Employed by or contracted with the Division of  
Community Correction, a local law enforcement agency, a court, or a local  
government and the actor is supervising the minor while the minor is on  
probation or parole or for any other court-ordered reason;



(C) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(D) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim; ~~or~~

(2) The person is a teacher, principal, athletic coach, or counselor in a public or private school in kindergarten through grade twelve (K-12) and the actor:

(A) Engages in sexual intercourse or deviate sexual activity with a person who is not the actor's spouse and the victim is:

(i) Less than twenty-one (21) years of age; and

(ii) A student enrolled in the public or private school employing the actor; and

(B) Is in a position of trust or authority over the victim and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity; or

(3) The person is eighteen (18) years of age or older and engages in sexual intercourse or deviate sexual activity with a person who is fourteen (14) years of age or older but less than eighteen (18) years of age and who is not the actor's spouse.

(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~~ subdivisions (a)(1)(D) and (a)(3) of this section that the actor was not more than ~~three (3)~~ two (2) years older than the victim.

(d) Sexual assault in the first degree is a Class A felony.

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;

1 (B) Mentally defective; or

2 (C) Mentally incapacitated;

3 (3) Being eighteen (18) years of age or older, engages in sexual  
4 contact with another person who is+

5 ~~(A) Less~~ less than fourteen (14) years of age; ~~and~~

6 ~~(B) Not the person's spouse;~~

7 (4)(A) Engages in sexual contact with a minor and the actor is:

8 (i) Employed with the Division of Correction, the  
9 Division of Community Correction, any city or county jail, or any juvenile  
10 detention facility, and the minor is in custody at a facility operated by the  
11 agency or contractor employing the actor;

12 (ii) Employed by or contracted with the Division of  
13 Community Correction, a local law enforcement agency, a court, or a local  
14 government and the actor is supervising the minor while the minor is on  
15 probation or parole or for any other court-ordered reason;

16 (iii) A mandated reporter under § 12-18-402(b) and  
17 is in a position of trust or authority over the minor; or

18 (iv) The minor's guardian, an employee in the  
19 minor's school or school district, a temporary caretaker, or a person in a  
20 position of trust or authority over the minor.

21 (B) For purposes of subdivision (a)(4)(A) of this section,  
22 consent of the minor is not a defense to a prosecution;

23 (5)(A) Being a minor, engages in ~~sexual contact~~ sexual  
24 intercourse or deviate sexual activity with another person who is+

25 ~~(i) Less~~ less than fourteen (14) years of age; ~~and~~

26 ~~(ii) Not the person's spouse.~~

27 (B) It is an affirmative defense to a prosecution under  
28 this subdivision (a)(5) that the actor was not more than+

29 ~~(i) Three (3)~~ two (2) years older than the victim ~~if~~  
30 ~~the victim is less than twelve (12) years of age; or~~

31 ~~(ii) Four (4) years older than the victim if the~~  
32 ~~victim is twelve (12) years of age or older; or~~

33 (6) Is a teacher, principal, athletic coach, or counselor in a  
34 public or private school in a grade kindergarten through twelve (K-12), in a  
35 position of trust or authority, and uses his or her position of trust or  
36 authority over the victim to engage in sexual contact with a victim who is:

(A) A student enrolled in the public or private 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 minor with another person who is:

(A) Less than fourteen (14) years of age; and

(B) Not the person's spouse.

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 Division of Correction, Division of Community Correction, Department of Human Services, or any city or county jail, the victim is in the custody of the Division of Correction, Division of Community Correction, ~~Department of Human Services~~ department, or any city or county jail, and the actor 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;

(B) Employed by or contracted with the Division of Community Correction, a local law enforcement agency, a court, or a local government and the actor is supervising the person while the person is on probation or parole or for any other court-ordered reason;

(C) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, the victim is in the custody of the Division of Correction, Division of Community Correction, ~~Department of Human Services~~ department, or any city or county jail, and the actor is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(D) A mandated reporter under § 12-18-402(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 a minor, engages in sexual ~~intercourse or deviate~~

1 ~~sexual activity~~ contact with another person who is+

2 ~~(i) Less~~ less than fourteen (14) years of age; and

3 ~~(ii) Not the person's spouse.~~

4 (B) It is an affirmative defense under this subdivision  
5 (a)(2) that the actor was not more than ~~three (3)~~ two (2) years older than  
6 the victim; or

7 (3)(A) Being eighteen (18) years of age or older, engages in  
8 sexual contact with a person who is fourteen (14) years of age or older but  
9 less than eighteen (18) years of age and who is not the actor's spouse.

10 (B) It is an affirmative defense under this subdivision  
11 (a)(3) that the actor was not more than two (2) years older than the victim.

12 (b) It is no defense to a prosecution under this section that the  
13 victim consented to the conduct.

14 (c) Sexual assault in the third degree is a Class C felony.

15  
16 5-14-127. Sexual assault in the fourth degree.

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

19 (1) Being ~~twenty (20) years of age or older~~ a minor+

20 ~~(A) Engages~~ engages in sexual intercourse or deviate  
21 sexual activity with another ~~person who is~~ minor who is not the actor's  
22 spouse

23 ~~(i) Less than sixteen (16) years of age; and~~

24 ~~(ii) Not the person's spouse; or~~

25 ~~(B) Engages in sexual contact with another person who is+~~

26 ~~(i) Less than sixteen (16) years of age; and~~

27 ~~(ii) Not the person's spouse; or~~

28 (2) Engages in sexual contact with another person who is not the  
29 actor's spouse, and the actor is employed with the Division of Correction,  
30 Division of Community Correction, Department of Human Services, or any city  
31 or county jail, and the victim is in the custody of the Division of  
32 Correction, Division of Community Correction, ~~Department of Human Services~~  
33 department, or a city or county jail.

34 ~~(b)(1)~~ It is an affirmative defense under subdivision (a)(1) of this  
35 section that the actor was not more than two (2) years older than the victim.

36 (c) Sexual assault in the fourth degree ~~under subdivisions (a)(1)(A)~~

1 ~~and (a)(2) of this section~~ is a Class D felony.

2           ~~(2) Sexual assault in the fourth degree under subdivision~~  
3 ~~(a)(1)(B) of this section is a Class A misdemeanor if the person engages only~~  
4 ~~in sexual contact with another person as described in subdivision (a)(1)(B)~~  
5 ~~of this section.~~