

State of Arkansas
93rd General Assembly
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A Bill

HOUSE BILL 1934

By: Representatives Miller, Payton

For An Act To Be Entitled

AN ACT CONCERNING THE AVAILABLE SENTENCES FOR CERTAIN
SEX OFFENSES INVOLVING A CHILD; AND FOR OTHER
PURPOSES.

Subtitle

CONCERNING THE AVAILABLE SENTENCES FOR
CERTAIN SEX OFFENSES INVOLVING A CHILD.

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

SECTION 1. Arkansas Code § 5-4-104(c), concerning authorized sentences
for a Class Y felony or murder in the second degree, is amended to read as
follows:

(c)(1)(A) A Except as provided under subdivision (c)(2) of this
section, a defendant convicted of a Class Y felony or murder in the second
degree, § 5-10-103, shall be sentenced to a term of imprisonment in
accordance with §§ 5-4-401 – 5-4-404.

~~(2)(B)~~ In addition to imposing a term of imprisonment, the
trial court may sentence a defendant convicted of a Class Y felony or murder
in the second degree, § 5-10-103, to any one (1) or more of the following:

~~(A)(i)~~ Pay a fine as authorized by §§ 5-4-201 and 5-
4-202;

~~(B)(ii)~~ Make restitution as authorized by § 5-4-205;
or

~~(C)(iii)~~ Suspend imposition of an additional term of
imprisonment, as authorized by subdivision (e)(3) of this section.

(2) A defendant who was eighteen (18) years of age or older at



1 the time of the offense and who was convicted of one (1) or more of the
 2 following Class Y felonies in which the victim was a minor at the time of the
 3 offense shall be sentenced to life without the possibility of parole:

4 (A) Rape involving forcible compulsion, § 5-14-103(a)(1);

5 (B) Trafficking of persons, § 5-18-103;

6 (C) Engaging children in sexually explicit conduct for use
 7 in visual or print medium, § 5-27-303;

8 (D) Transportation of minors for prohibited sexual
 9 conduct, § 5-27-305;

10 (E) Producing, directing, or promoting a sexual
 11 performance by a child, § 5-27-403;

12 (F) Distributing matter depicting sexually explicit
 13 conduct involving a child, 5-27-602; and

14 (G) Computer exploitation of a child in the first degree,
 15 § 5-27-605.

16
 17 SECTION 2. Arkansas Code § 5-14-103(c), concerning the sentence for
 18 rape, is amended to read as follows:

19 (c)(1) Rape is a Class Y felony.

20 (2) ~~Any person~~ Except as provided under § 5-14-104(c)(2), a
 21 person who pleads guilty or nolo contendere to or is found guilty of rape
 22 involving a victim who is less than fourteen (14) years of age shall be
 23 sentenced to a minimum term of imprisonment of twenty-five (25) years.

24
 25 SECTION 3. Arkansas Code § 5-27-303 is amended to read as follows:
 26 5-27-303. Engaging children in sexually explicit conduct for use in
 27 visual or print medium.

28 (a) Any person eighteen (18) years of age or older who employs, uses,
 29 persuades, induces, entices, or coerces any child to engage in or who has a
 30 child assist any other person to engage in any sexually explicit conduct for
 31 the purpose of producing any visual or print medium depicting the sexually
 32 explicit conduct upon conviction is guilty of a Class Y felony+

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

34 ~~(2) Class A felony for a subsequent offense.~~

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

1 person to engage in sexually explicit conduct for the purpose of producing
 2 any visual or print medium depicting the sexually explicit conduct upon
 3 conviction is guilty of a Class Y felony+

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

5 ~~(2) Class A felony for a subsequent offense.~~

6
 7 SECTION 4. Arkansas Code § 5-27-305 is amended to read as follows:

8 5-27-305. Transportation of minors for prohibited sexual conduct.

9 (a) A person commits the offense of transportation of a minor for
 10 prohibited sexual conduct if the person transports, finances in whole or part
 11 the transportation of, or otherwise causes or facilitates the movement of any
 12 minor, and the actor:

13 (1) Knows or has reason to know that prostitution or sexually
 14 explicit conduct involving the minor will be commercially exploited by any
 15 person; and

16 (2) Acts with the purpose that the minor will engage in:

17 (A) Prostitution; or

18 (B) Sexually explicit conduct.

19 (b) Transportation of a minor for prohibited sexual conduct is a Class
 20 A Y felony.

21
 22 SECTION 5. Arkansas Code § 5-27-403 is amended to read as follows:

23 5-27-403. Producing, directing, or promoting a sexual performance by a
 24 child.

25 (a) It is unlawful for a person, knowing the character and content of
 26 the material, to produce, direct, or promote a performance that includes
 27 sexual conduct by a child under eighteen (18) years of age.

28 (b) A person who violates this section upon conviction is guilty of a
 29 Class ~~B~~ Y felony.

30
 31 SECTION 6. Arkansas Code § 5-27-602 is amended to read as follows:

32 5-27-602. Distributing, possessing, or viewing of matter depicting
 33 sexually explicit conduct involving a child.

34 (a) A person commits distributing, possessing, or viewing of matter
 35 depicting sexually explicit conduct involving a child if the person
 36 knowingly:

(1) Receives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers, or agrees to offer through any means, including the ~~Internet~~ internet, any photograph, film, videotape, computer program or file, video game, or any other reproduction or reconstruction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct; or

(2) Possesses or views through any means, including on the ~~Internet~~ internet, any photograph, film, videotape, computer program or file, computer-generated image, video game, or any other reproduction that depicts a child or incorporates the image of a child engaging in sexually explicit conduct.

(b)(1) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child under subdivision (a)(1) of this section is a Class Y felony.

(2) Otherwise, distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child is a:

~~(1)~~(A) Class C felony for the first offense; and

~~(2)~~(B) Class B felony for any subsequent offense.

(c) It is an affirmative defense to a prosecution under this section that the defendant in good faith reasonably believed that the person depicted in the matter was seventeen (17) years of age or older.

SECTION 7. Arkansas Code § 5-27-605 is amended to read as follows:

5-27-605. Computer exploitation of a child.

(a)(1) A person commits computer exploitation of a child in the first degree if the person:

(A) Causes or permits a child to engage in sexually explicit conduct; and

(B) Knows, has reason to know, or intends that the prohibited conduct may be:

(i) Photographed;

(ii) Filmed;

(iii) Reproduced;

(iv) Reconstructed in any manner, including on the

1 ~~Internet~~ internet; or

2 (v) Part of an exhibition or performance.

3 (2) Computer exploitation of a child in the first degree is a+

4 ~~(A) Class B felony for the first offense; and~~

5 ~~(B) Class A Y felony for a subsequent offense.~~

6 (b)(1) A person commits computer exploitation of a child in the second
7 degree if the person:

8 (A) Photographs or films a child engaged in sexually
9 explicit conduct; or

10 (B) Uses any device, including a computer, to reproduce or
11 reconstruct the image of a child engaged in sexually explicit conduct.

12 (2) Computer exploitation of a child in the second degree is a
13 Class C felony.

14
15 SECTION 8. Arkansas Code § 16-93-613 is amended to read as follows:

16 16-93-613. Parole eligibility – Class Y, Class A, or Class B felonies.

17 (a) A person who commits a Class Y felony, Class A felony, or Class B
18 felony, except those drug offenses addressed in § 16-93-618 or those Class Y
19 felonies addressed in § 5-4-104(c)(2), § 16-93-614, or § 16-93-618, and who
20 shall be convicted and incarcerated for that felony, shall be eligible for
21 release on parole as follows:

22 (1) An inmate under sentence of death or life imprisonment
23 without parole is not eligible for release on parole but may be pardoned or
24 have his or her sentence commuted by the Governor, as provided by law; and

25 (2)(A) An inmate sentenced to life imprisonment is not eligible
26 for release on parole unless the sentence is commuted to a term of years by
27 executive clemency.

28 (B) Upon commutation, the inmate is eligible for release
29 on parole as provided in this subchapter.

30 (b) For parole eligibility purposes, consecutive sentences by one (1)
31 or more courts or for one (1) or more counts are to be considered as a single
32 commitment reflecting the cumulative sentence to be served.

33 (c) Except as provided for under § 16-93-621, for an offense committed
34 before, on, or after March 20, 2017, a person who was a minor at the time of
35 committing an offense listed under subsection (a) of this section is eligible
36 for release on parole under this section.

SECTION 9. Arkansas Code § 16-93-615(a)(1)(A), concerning parole eligibility procedures, is amended to read as follows:

(a)(1)(A) An inmate under sentence for any felony, except those listed in § 5-4-104(c)(2) or subsection (b) of this section, shall be transferred from the ~~Department~~ Division of Correction to the Department of Community Correction under this section and §§ 16-93-614, 16-93-616, and 16-93-617, subject to rules promulgated by the Board of Corrections or the Parole Board and conditions adopted by the Parole Board.

SECTION 10. Arkansas Code § 16-93-618(a)(1), concerning parole eligibility for certain offenses, is amended to read as follows:

(a)(1) Notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, a person who is found guilty of or pleads guilty or nolo contendere to subdivisions (a)(1)(A)-(I) of this section shall not be eligible for parole or community correction transfer, except as provided in subdivision (a)(3) or subsection (c) of this section, until the person serves seventy percent (70%) of the term of imprisonment to which the person is sentenced, including a sentence prescribed under § 5-4-501:

- (A) Murder in the first degree, § 5-10-102;
- (B) Kidnapping, Class Y felony, § 5-11-102;
- (C) Aggravated robbery, § 5-12-103;
- (D) Rape, § 5-14-103, unless the person was sentenced to life without the possibility of parole;
- (E) Trafficking of persons, Class Y felony, § 5-18-103, unless the person was sentenced to life without the possibility of parole;
- (F) Causing a catastrophe, § 5-38-202(a);
- (G) Manufacturing methamphetamine, § 5-64-423(a) or the former § 5-64-401;
- (H) Trafficking methamphetamine, § 5-64-440(b)(1); or
- (I) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5).