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2 93rd General Assembly
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4

A Bill

SENATE BILL 28

5 By: Senator T. Garner
6

For An Act To Be Entitled

8 AN ACT TO MAKE RAPE OF A CHILD BY FORCIBLE COMPULSION
9 A CAPITAL OFFENSE; AND FOR OTHER PURPOSES.
10
11

Subtitle

12
13 TO MAKE RAPE OF A CHILD BY FORCIBLE
14 COMPULSION A CAPITAL OFFENSE.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 5-3-203 is amended to read as follows:
20 5-3-203. Classification.

21 A criminal attempt is a:

22 (1) Class Y felony if the offense attempted is capital murder, §
23 5-10-101;

24 (2) Class A felony if the offense attempted is treason, § 5-51-
25 201, rape of a child by forcible compulsion, § 5-14-114, or a Class Y felony
26 other than capital murder, § 5-10-101;

27 (3) Class B felony if the offense attempted is a Class A felony;

28 (4) Class C felony if the offense attempted is a Class B felony;

29 (5) Class D felony if the offense attempted is a Class C felony;

30 (6) Class A misdemeanor if the offense attempted is a Class D
31 felony or an unclassified felony;

32 (7) Class B misdemeanor if the offense attempted is a Class A
33 misdemeanor;

34 (8) Class C misdemeanor if the offense attempted is a Class B
35 misdemeanor; or

36 (9) Violation if the offense attempted is a Class C misdemeanor



1 or an unclassified misdemeanor.

2
3 SECTION 2. Arkansas Code § 5-3-301(b)(1), concerning the inchoate
4 offense of solicitation, is amended to read as follows:

5 (1) Class A felony if the offense solicited is ~~capital murder,~~
6 ~~treason~~ capital murder, § 5-10-101, treason, § 5-51-201, rape of a child by
7 forcible compulsion, § 5-14-114, or a Class Y felony;

8
9 SECTION 3. Arkansas Code § 5-3-404 is amended to read as follows:
10 5-3-404. Classification.

11 Criminal conspiracy is a:

12 (1) Class A felony if an object of the conspiracy is commission
13 of ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201,
14 rape of a child by forcible compulsion, § 5-14-114, or a Class Y felony;

15 (2) Class B felony if an object of the conspiracy is commission
16 of a Class A felony;

17 (3) Class C felony if an object of the conspiracy is commission
18 of a Class B felony;

19 (4) Class D felony if an object of the conspiracy is commission
20 of a Class C felony;

21 (5) Class A misdemeanor if an object of the conspiracy is
22 commission of a Class D felony or an unclassified felony;

23 (6) Class B misdemeanor if an object of the conspiracy is
24 commission of a Class A misdemeanor; or

25 (7) Class C misdemeanor if an object of the conspiracy is
26 commission of a Class B misdemeanor.

27
28 SECTION 4. Arkansas Code § 5-4-104(a)-(e), concerning authorized
29 sentences, are amended to read as follows:

30 (a) No defendant convicted of an offense shall be sentenced otherwise
31 than in accordance with this chapter.

32 (b) A defendant convicted of capital murder, § 5-10-101, ~~or~~ treason, §
33 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, shall be
34 sentenced to death or life imprisonment without parole in accordance with §§
35 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the defendant was younger
36 than eighteen (18) years of age at the time he or she committed the ~~capital~~

~~murder or treason~~ capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, he or she shall be sentenced to life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment.

(c)(1) 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) 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) Pay a fine as authorized by §§ 5-4-201 and 5-4-202;
- (B) Make restitution as authorized by § 5-4-205; or
- (C) Suspend imposition of an additional term of imprisonment, as authorized by subdivision (e)(3) of this section.

(d) A defendant convicted of an offense other than a Class Y felony, capital murder, § 5-10-101, treason, § 5-51-201, rape of a child by forcible compulsion, § 5-14-114, or murder in the second degree, § 5-10-103, may be sentenced to any one (1) or more of the following, except as precluded by subsection (e) of this section:

- (1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;
- (2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314;
- (3) Payment of a fine as authorized by §§ 5-4-201 and 5-4-202;
- (4) Restitution as authorized by a provision of § 5-4-205; or
- (5) Imprisonment and payment of a fine.

(e)(1)(A) The court shall not suspend imposition of sentence as to a term of imprisonment nor place the defendant on probation for the following offenses:

- (i) Capital murder, § 5-10-101;
- (ii) Treason, § 5-51-201;
- (iii) Rape of a child by forcible compulsion, § 5-14-114;

~~(iii)~~(iv) A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section;

~~(iv)~~(v) Driving or boating while intoxicated, § 5-

65-103;

~~(v)~~(vi) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section; or

~~(vi)~~(vii) Engaging in a continuing criminal enterprise, § 5-64-405.

(B)(i) In any other case, the court may suspend imposition of sentence or place the defendant on probation, in accordance with §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314, except as otherwise specifically prohibited by statute.

(ii) The court may not suspend execution of sentence.

(2) If the offense is punishable by fine and imprisonment, the court may sentence the defendant to pay a fine and suspend imposition of the sentence as to imprisonment or place the defendant on probation.

(3)(A) The court may sentence the defendant to a term of imprisonment and suspend imposition of sentence as to an additional term of imprisonment.

(B) However, the court shall not sentence a defendant to imprisonment and place him or her on probation, except as authorized by § 5-4-304.

SECTION 5. Arkansas Code § 5-4-301(a)(1), concerning offenses for which suspension or probation is prohibited, is amended to read as follows:

(a)(1) A court shall not suspend imposition of sentence as to a term of imprisonment or place a defendant on probation for the following offenses:

(A) Capital murder, § 5-10-101;

(B) Treason, § 5-51-201;

(C) Rape of a child by forcible compulsion, § 5-14-114;

~~(C)~~(D) A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c);

~~(D)~~(E) Driving or boating while intoxicated, § 5-65-103;

~~(E)~~(F) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c); or

~~(F)~~(G) Engaging in a continuing criminal enterprise, § 5-

1 64-405.

2
3 SECTION 6. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended
4 to read as follows:

5 Subchapter 6
6 - Trial and Sentence - Capital ~~Murder~~ Offenses
7

8 5-4-601. Legislative intent.

9 (a) In enacting this subchapter, it is the intent of the General
10 Assembly to specify the procedures and standards pursuant to which a
11 sentencing body shall conform in making a determination as to whether a
12 sentence of death is to be imposed upon a conviction ~~of capital murder for~~
13 capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by
14 forcible compulsion, § 5-14-114.

15 (b) If the provisions of this subchapter respecting sentencing
16 procedures are held invalid with regard to the imposition of a sentence of
17 death or a sentence of death is declared to be invalid per se, it is the
18 intent of the General Assembly that+

19 ~~(1) Capital murder is~~ capital murder, § 5-10-101, treason, § 5-
20 51-201, and rape of a child by forcible compulsion, § 5-14-114, are
21 punishable by life imprisonment without parole; and

22 ~~(2) The procedures and findings required by §§ 5-4-602—5-4-~~
23 ~~605, 5-4-607, and 5-4-608 are deemed repealed and of no effect.~~
24

25 5-4-602. Capital ~~murder~~ offense charge - Trial procedure.

26 The following procedures govern a trial of a person charged with
27 capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by
28 forcible compulsion, § 5-14-114:

29 (1) The jury shall first hear all evidence relevant to the
30 charge and shall then retire to reach a verdict of guilt or innocence;

31 (2) If the defendant is found not guilty of the capital offense
32 charged but guilty of a lesser included offense, the sentence shall be
33 determined and imposed as provided by law;

34 (3)(A) If the defendant is found guilty of ~~capital murder~~ the
35 capital offense, the same jury shall sit again in order to:

36 (i) Hear additional evidence as provided by

1 subdivisions (4) and (5) of this section; and

2 (ii) Determine the sentence in the manner provided
3 by § 5-4-603.

4 (B) However, if the state waives the death penalty,
5 stipulates that no aggravating circumstance exists, or stipulates that
6 mitigating circumstances outweigh aggravating circumstances, then:

7 (i) A hearing under subdivision (3)(A) of this
8 section is not required; and

9 (ii) The trial court shall sentence the defendant to
10 life imprisonment without parole.

11 (C) If the defendant was less than eighteen (18) years of
12 age at the time of the offense, then a hearing under subdivision (3)(A) of
13 this section is not required;

14 (4)(A) If the defendant and the state are accorded an
15 opportunity to rebut the evidence, in determining the sentence evidence may
16 be presented to the jury as to any:

17 (i) Matter relating to an aggravating circumstance
18 enumerated in § 5-4-604;

19 (ii) Mitigating circumstance; or

20 (iii) Other matter relevant to punishment,
21 including, but not limited to, victim impact evidence.

22 (B)(i) Evidence as to any mitigating circumstance may be
23 presented by either the state or the defendant regardless of the evidence's
24 admissibility under the rules governing admission of evidence in a trial of a
25 criminal matter.

26 (ii) However, mitigating circumstance evidence shall
27 be relevant to the issue of punishment, including, but not limited to, the
28 nature and circumstances of the crime, and the defendant's character,
29 background, history, and mental and physical condition as set forth in § 5-4-
30 605.

31 (C) The admissibility of evidence relevant to an
32 aggravating circumstance set forth in § 5-4-604 is governed by the rules
33 governing the admission of evidence in a trial of a criminal matter.

34 (D) Any evidence admitted at the trial relevant to
35 punishment may be considered by the jury without the necessity of
36 reintroducing the evidence at the sentencing proceeding; and

1 (5) The state and the defendant or his or her counsel are
2 permitted to present argument respecting sentencing:

3 (A) The state shall open the argument;

4 (B) The defendant is permitted to reply; and

5 (C) The state is then permitted to reply in rebuttal.

6
7 5-4-603. Findings required for death sentence – Harmless error review.

8 (a) The jury shall impose a sentence of death if the jury unanimously
9 returns written findings that:

10 (1) An aggravating circumstance exists beyond a reasonable
11 doubt;

12 (2) Aggravating circumstances outweigh beyond a reasonable
13 doubt all mitigating circumstances found to exist; and

14 (3) Aggravating circumstances justify a sentence of death beyond
15 a reasonable doubt.

16 (b) The jury shall impose a sentence of life imprisonment without
17 parole if the jury finds that:

18 (1) Aggravating circumstances do not exist beyond a reasonable
19 doubt;

20 (2) Aggravating circumstances do not outweigh beyond a
21 reasonable doubt all mitigating circumstances found to exist; or

22 (3) Aggravating circumstances do not justify a sentence of death
23 beyond a reasonable doubt.

24 (c) If the jury does not make any finding required by subsection (a)
25 of this section, the court shall impose a sentence of life imprisonment
26 without parole.

27 (d)(1) On an appellate review of a death sentence, the Supreme Court
28 shall conduct a harmless error review of the defendant's death sentence if:

29 (A) The Supreme Court finds that the jury erred in finding
30 the existence of any aggravating circumstance for any reason; and

31 (B) The jury found no mitigating circumstance.

32 (2) The Supreme Court shall conduct a harmless error review
33 under subdivision (d)(1) of this section by determining that a remaining
34 aggravating circumstance:

35 (A) Exists beyond a reasonable doubt; and

36 (B) Justifies a sentence of death beyond a reasonable

1 doubt.

2 (e) If the Supreme Court concludes that the erroneous finding of any
3 aggravating circumstance by the jury would not have changed the jury's
4 decision to impose the death penalty on the defendant, then a simple majority
5 of the court may vote to affirm the defendant's death sentence.

6
7 5-4-604. Aggravating circumstances.

8 An aggravating circumstance is limited to the following:

9 (1) The capital ~~murder~~ offense was committed by a person
10 imprisoned as a result of a felony conviction;

11 (2) The capital ~~murder~~ offense was committed by a person
12 unlawfully at liberty after being sentenced to imprisonment as a result of a
13 felony conviction;

14 (3) The person previously committed another felony, an element
15 of which was the use or threat of violence to another person or the creation
16 of a substantial risk of death or serious physical injury to another person;

17 (4) The person in the commission of the capital ~~murder~~ offense
18 knowingly created a great risk of death to a person other than the victim or
19 caused the death of more than one (1) person in the same criminal episode;

20 (5) The capital ~~murder~~ offense was committed for the purpose of
21 avoiding or preventing an arrest or effecting an escape from custody;

22 (6) The capital ~~murder~~ offense was committed for pecuniary gain;

23 (7) The capital ~~murder~~ offense was committed for the purpose of
24 disrupting or hindering the lawful exercise of any government or political
25 function;

26 (8)(A) The capital ~~murder~~ offense was committed in an especially
27 cruel or depraved manner.

28 (B)(i) For purposes of subdivision (8)(A) of this section,
29 a capital ~~murder~~ offense is committed in an especially cruel manner when, as
30 part of a course of conduct intended to inflict mental anguish, serious
31 physical abuse, or torture upon the victim prior to the victim's death,
32 mental anguish, serious physical abuse, or torture is inflicted.

33 (ii)(a) "Mental anguish" means the victim's
34 uncertainty as to his or her ultimate fate.

35 (b) "Serious physical abuse" means physical
36 abuse that creates a substantial risk of death or that causes protracted

1 impairment of health, or loss or protracted impairment of the function of any
2 bodily member or organ.

3 (c) "Torture" means the infliction of extreme
4 physical pain for a prolonged period of time prior to the victim's death.

5 (C) For purposes of subdivision (8)(A) of this section, a
6 capital ~~murder~~ offense is committed in an especially depraved manner when the
7 person relishes the ~~murder~~ capital offense, evidencing debasement or
8 perversion, or shows an indifference to the suffering of the victim and
9 evidences a sense of pleasure in committing the ~~murder~~ capital offense;

10 (9) The capital ~~murder~~ offense was committed by means of a
11 destructive device, bomb, explosive, or similar device that the person
12 planted, hid, or concealed in any place, area, dwelling, building, or
13 structure, or mailed or delivered, or caused to be planted, hidden,
14 concealed, mailed, or delivered, and the person knew that his or her act
15 would create a great risk of death to human life; or

16 (10) The capital ~~murder~~ offense was committed against a person
17 whom the defendant knew or reasonably should have known was especially
18 vulnerable to the attack because:

19 (A) Of either a temporary or permanent severe physical or
20 mental disability which would interfere with the victim's ability to flee or
21 to defend himself or herself; or

22 (B) The person was twelve (12) years of age or younger.

23
24 5-4-605. Mitigating circumstances.

25 A mitigating circumstance includes, ~~but is not limited to,~~ without
26 limitation the following:

27 (1) The capital ~~murder~~ offense was committed while the defendant
28 was under extreme mental or emotional disturbance;

29 (2) The capital ~~murder~~ offense was committed while the defendant
30 was acting under an unusual pressure or influence or under the domination of
31 another person;

32 (3) The capital ~~murder~~ offense was committed while the capacity
33 of the defendant to appreciate the wrongfulness of his or her conduct or to
34 conform his or her conduct to the requirements of law was impaired as a
35 result of mental disease or defect, intoxication, or drug abuse;

36 (4) The youth of the defendant at the time of the commission of

1 the capital ~~murder~~ offense;

2 (5) The capital ~~murder~~ offense was committed by another person
3 and the defendant was an accomplice and his or her participation was
4 relatively minor; or

5 (6) The defendant has no significant history of prior criminal
6 activity.

7
8 5-4-606. Life imprisonment without parole.

9 A person sentenced to life imprisonment without parole shall:

10 (1) Be remanded to the custody of the Division of Correction for
11 imprisonment for the remainder of his or her life; and

12 (2) Not be released except ~~pursuant to~~ under commutation,
13 pardon, or reprieve of the Governor.

14
15 5-4-607. Application for executive clemency – Regulations.

16 (a) The pardon of a person convicted of capital murder, § 5-10-101,
17 treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114,
18 or of a Class Y felony, Class A felony, or Class B felony, or the commutation
19 of a sentence of a person convicted of capital murder, § 5-10-101, treason, §
20 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, or of a
21 Class Y felony, Class A felony, or Class B felony, may be granted only in the
22 manner provided in this section.

23 (b)(1) A copy of the application for pardon or commutation shall be
24 filed with:

25 (A) The Secretary of State;

26 (B) The Attorney General;

27 (C) The sheriff of the county where the offense was
28 committed;

29 (D) The prosecuting attorney of the judicial district
30 where the applicant was found guilty and sentenced, if still in office, and,
31 if not, the successor of that prosecuting attorney;

32 (E) The circuit judge presiding over the proceedings at
33 which the applicant was found guilty and sentenced, if still in office, and,
34 if not, the successor of that circuit judge; and

35 (F) The victim of the crime or the victim's next of kin,
36 if he or she files a request for notice with the prosecuting attorney.

(2)(A) The application shall set forth a ground upon which the pardon or commutation is sought.

(B) If the application involves a conviction for capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, a notice of the application shall be published by two (2) insertions, separated by a minimum of seven (7) days, in a newspaper of general circulation in the county or counties where the offense or offenses of the applicant were committed.

(c) On granting an application for pardon or commutation, the Governor shall:

(1) Include in his or her written order the reason for the granting of the application; and

(2) File with the House of Representatives and the Senate a copy of his or her written order which shall state the:

(A) Applicant's name;

(B) Offense of which the applicant was convicted and the sentence imposed;

(C) Date of the judgment imposing the sentence; and

(D) Effective date of the pardon or commutation.

(d) A person sentenced to death or to life imprisonment without parole is not eligible for parole and shall not be paroled.

(e) If the sentence of a person sentenced to death or life imprisonment without parole is commuted by the Governor to a term of years, the person shall not be paroled, nor shall the length of his or her incarceration be reduced in any way to less than the full term of years specified in the order of commutation or in any subsequent order of commutation.

(f) A reprieve may be granted as presently provided by law.

5-4-608. Waiver of death penalty.

(a) If a defendant is charged with a capital ~~murder~~ offense, with the permission of the court the prosecuting attorney may waive the death penalty.

(b) In a case described in subsection (a) of this section, if the defendant pleads guilty to the capital ~~murder~~ offense or is found guilty of a capital ~~murder~~ offense after trial to the court or to a jury, the trial court shall sentence the defendant to life imprisonment without parole.

1
2 5-4-609 – 5-4-614. [Reserved.]
3

4 5-4-615. Conviction – Punishments.

5 A person convicted of a capital offense shall be punished by death by
6 lethal injection or by life imprisonment without parole ~~pursuant to~~ under
7 this subchapter.
8

9 5-4-616. Procedures following remand of capital ~~case~~ offense after
10 vacation of death sentence – Retroactive application.

11 (a) Notwithstanding § 5-4-602(3) that requires that the same jury sit
12 in the sentencing phase of a capital ~~murder~~ offense trial, the following
13 shall apply:

14 (1)(A) Upon any appeal by the defendant when the sentence is of
15 death, if the appellate court finds prejudicial error in the sentencing
16 proceeding only, the appellate court may set aside the sentence of death and
17 remand the case to the trial court in the jurisdiction in which the defendant
18 was originally sentenced.

19 (B) No error in the sentencing proceeding shall result in
20 the reversal of the conviction for a capital ~~felony~~ offense.

21 (C) When a capital ~~case~~ offense is remanded after vacation
22 of a death sentence, the prosecutor may move the trial court to:

23 (i) Impose a sentence of life without parole, and
24 the trial court may impose the sentence of life without parole without a
25 hearing; or

26 (ii) Impanel a new sentencing jury;

27 (2) If the prosecutor elects subdivision (a)(1)(C)(ii) of this
28 section the trial court shall impanel a new jury for the purpose of
29 conducting a new sentencing proceeding;

30 (3) A new sentencing proceeding is governed by ~~the provisions of~~
31 § 5-4-602(4) and (5) and §§ 5-4-603 – 5-4-605;

32 (4)(A) Any exhibit and a transcript of any testimony or other
33 evidence properly admitted in the prior trial and sentencing is admissible in
34 the new sentencing proceeding.

35 (B) Additional relevant evidence may be admitted including
36 testimony of a witness who testified at the previous trial; and

1 (5) The provisions of this section:

2 (A) Are procedural; and

3 (B) Apply retroactively to any defendant sentenced to
4 death after January 1, 1974.

5 (b) This section ~~shall not be construed to~~ does not amend a provision
6 of § 5-4-602 requiring the same jury to sit in both the guilt and sentencing
7 phases of the original trial.

8
9 5-4-617. Method of execution.

10 (a) The Division of Correction shall carry out the sentence of death
11 by intravenous lethal injection of the drug or drugs described in subsection
12 (c) of this section in an amount sufficient to cause death.

13 (b) The Director of the Division of Correction or his or her designee
14 may order the dispensation and administration of the drug or drugs described
15 in subsection (c) of this section for the purpose of carrying out the lethal-
16 injection procedure, and a prescription is not required.

17 (c) The division shall select one (1) of the following options for a
18 lethal-injection protocol, depending on the availability of the drugs:

19 (1) A barbiturate; or

20 (2) Midazolam, followed by vecuronium bromide, followed by
21 potassium chloride.

22 (d) The drug or drugs described in subsection (c) of this section used
23 to carry out the lethal injection shall be:

24 (1) Approved by the United States Food and Drug Administration
25 and made by a manufacturer approved by the United States Food and Drug
26 Administration;

27 (2) Obtained from a facility registered with the United States
28 Food and Drug Administration; or

29 (3) Obtained from a compounding pharmacy that has been
30 accredited by a national organization that accredits compounding pharmacies.

31 (e) The drugs set forth in subsection (c) of this section shall be
32 administered along with any additional substances, such as saline solution,
33 called for in the instructions.

34 (f) Catheters, sterile intravenous solution, and other equipment used
35 for the intravenous injection of the drug or drugs set forth in subsection
36 (c) of this section shall be sterilized and prepared in a manner that is safe

1 and commonly performed in connection with the intravenous administration of
2 drugs of that type.

3 (g) The director shall develop logistical procedures necessary to
4 carry out the sentence of death, including:

5 (1) The following matters:

6 (A) Ensuring that the drugs and substances set forth in
7 this section and other necessary supplies for the lethal injection are
8 available for use on the scheduled date of the execution;

9 (B) Conducting employee orientation of the lethal
10 injection procedure before the day of the execution;

11 (C) Determining the logistics of the viewing;

12 (D) Coordinating with other governmental agencies involved
13 with security and law enforcement;

14 (E) Transferring the condemned prisoner to the facility
15 where the sentence of death will be carried out;

16 (F) Escorting the condemned prisoner from the holding cell
17 to the execution chamber;

18 (G) Determining the identity, arrival, and departure of
19 the persons involved with carrying out the sentence of death at the facility
20 where the sentence of death will be carried out; and

21 (H) Making arrangements for the disposition of the
22 condemned prisoner's body and personal property; and

23 (2) The following matters pertaining to other logistical issues:

24 (A) Chaplaincy services;

25 (B) Visitation privileges;

26 (C) Determining the condemned prisoner's death, which
27 shall be pronounced according to accepted medical standards; and

28 (D) Establishing a protocol for any necessary mixing or
29 reconstitution of the drugs and substances set forth in this section in
30 accordance with the instructions.

31 (h) The procedures for carrying out the sentence of death and related
32 matters are not subject to the Arkansas Administrative Procedure Act, § 25-
33 15-201 et seq.

34 (i)(1) Except as provided for under subdivision (i)(2) of this
35 section, a person shall not disclose in response to a request under the
36 Freedom of Information Act of 1967, § 25-19-101 et seq., or in response to

1 discovery under the Arkansas Rules of Civil Procedure, or otherwise, any of
2 the following:

3 (A) Documents, records, or information that may identify
4 or reasonably lead to the identification of entities or persons who
5 participate in the execution process or administer lethal injections;

6 (B) Documents, records, or information that may identify
7 or reasonably lead directly or indirectly to the identification of an entity
8 or person who compounds, synthesizes, tests, sells, supplies, manufactures,
9 transports, procures, dispenses, or prescribes the drug or drugs described in
10 subsection (c) of this section, or that provides the medical supplies or
11 medical equipment for the execution process; or

12 (C) Documents, records, or information that concern the
13 procedures under subdivision (g)(1) of this section and the implementation of
14 the procedures under subdivision (g)(1) of this section.

15 (2) The following documents, records, and information may be
16 disclosed:

17 (A) The director may disclose or authorize disclosure of
18 documents, records, and information to his or her subordinates, contractors,
19 or vendors to the extent necessary to carry out his or her duties under this
20 section;

21 (B) The director may disclose or authorize disclosure of
22 documents, records, and information to the Governor or the Attorney General,
23 or both; and

24 (C) The Governor or the Attorney General, or both, may
25 disclose or authorize the disclosure of documents, records, and information
26 to their subordinates to the extent necessary to carry out their duties under
27 law.

28 (3)(A) If any part of this subsection is invalidated by a final
29 and unappealable court order, any unauthorized disclosure of information
30 under this section shall be permitted only after the entry and service of an
31 order prohibiting public disclosure or use of the documents, records, or
32 information and requiring that a public filing of the documents, records, or
33 information be done under seal.

34 (B) A person who recklessly discloses documents, records,
35 or information in violation of an order under this subdivision (i)(3) upon
36 conviction is guilty of a Class D felony.

1 (j)(1) The director shall certify under oath that the drug or drugs
2 described in subsection (c) of this section meet the requirements of
3 subsection (d) of this section.

4 (2) After the certification required under this subsection, a
5 challenge to the conformity of the drug or drugs described under subsection
6 (c) of this section with the requirements of subsection (d) of this section
7 shall be brought only as an original action in the Supreme Court.

8 (k) The division shall make available to the public any of the
9 following information upon request, so long as the information that may be
10 used to identify an entity or person listed in subsection (i) of this section
11 is redacted and maintained as confidential:

12 (1) The certification provided for under subsection (j) of this
13 section; and

14 (2) The division's procedure for administering the drug or drugs
15 described in subsection (c) of this section.

16 (1) The division shall carry out the sentence of death by
17 electrocution if execution by lethal injection under this section is
18 invalidated by a final and unappealable court order.

19 (m) Every person that procures, prepares, administers, monitors, or
20 supervises the injection of a drug or drugs under this section has immunity
21 under § 19-10-305.

22 (n) A person who recklessly discloses documents, records, or
23 information in violation of subdivision (i)(1) of this section upon
24 conviction is guilty of a Class D felony.

25
26 5-4-618. Defendants with intellectual disabilities.

27 (a)(1) As used in this section, "intellectual disabilities" means:

28 (A) Significantly below-average general intellectual
29 functioning accompanied by a significant deficit or impairment in adaptive
30 functioning manifest in the developmental period, but no later than age
31 eighteen (18) years of age; and

32 (B) A deficit in adaptive behavior.

33 (2) There is a rebuttable presumption of intellectual
34 disabilities when a defendant has an intelligence quotient of sixty-five (65)
35 or below.

36 (b) No defendant with intellectual disabilities at the time of

1 committing capital murder, § 5-10-101, treason, § 5-51-201, or rape of a
 2 child by forcible compulsion, § 5-14-114, shall be sentenced to death.

3 (c) The defendant has the burden of proving intellectual disabilities
 4 at the time of committing the offense by a preponderance of the evidence.

5 (d)(1) A defendant on trial for capital murder, § 5-10-101, treason, §
 6 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, shall raise
 7 the special sentencing provision of intellectual disabilities by motion prior
 8 to trial.

9 (2)(A) Prior to trial, the court shall determine if the
 10 defendant has an intellectual disability.

11 (B)(i) If the court determines that the defendant does not
 12 have an intellectual disability, the defendant may raise the question of an
 13 intellectual disability to the jury for determination de novo during the
 14 sentencing phase of the trial.

15 (ii) At the time the jury retires to decide
 16 mitigating and aggravating circumstances, the jury shall be given a special
 17 verdict form on an intellectual disability.

18 (iii) If the jury unanimously determines that the
 19 defendant had an intellectual disability at the time of the commission of
 20 capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by
 21 forcible compulsion, § 5-14-114, then the defendant will automatically be
 22 sentenced to life imprisonment without possibility of parole.

23 (C) If the court determines that the defendant has an
 24 intellectual disability, then:

25 (i) The jury is not "death qualified"; and

26 (ii) The jury shall sentence the defendant to life
 27 imprisonment without possibility of parole upon conviction.

28 (e) However, this section is not deemed to:

29 (1) Require unanimity for consideration of any mitigating
 30 circumstance; or

31 (2) Supersede any suggested mitigating circumstance regarding
 32 mental defect or disease currently found in § 5-4-605.

33
 34 SECTION 7. Arkansas Code § 5-14-103 is amended to read as follows:
 35 5-14-103. Rape.

36 (a) A person commits rape if he or she engages in sexual intercourse

1 or deviate sexual activity with another person:

2 (1) By forcible compulsion;

3 (2) Who is incapable of consent because he or she is:

4 (A) Physically helpless;

5 (B) Mentally defective; or

6 (C) Mentally incapacitated;

7 (3)(A) Who is less than fourteen (14) years of age.

8 (B) It is an affirmative defense to a prosecution under
9 subdivision (a)(3)(A) of this section that the actor was not more than three
10 (3) years older than the victim; or

11 (4)(A) Who is a minor and the actor is the victim's:

12 (i) Guardian;

13 (ii) Uncle, aunt, grandparent, step-grandparent, or
14 grandparent by adoption;

15 (iii) Brother or sister of the whole or half blood
16 or by adoption; or

17 (iv) Nephew, niece, or first cousin.

18 (B) It is an affirmative defense to a prosecution under
19 subdivision (a)(4)(A) of this section that the actor was not more than three
20 (3) years older than the victim.

21 (b) It is no defense to a prosecution under subdivision (a)(3) or
22 subdivision (a)(4) of this section that the victim consented to the conduct.

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

24 (2) Any person who pleads guilty or nolo contendere to or is
25 found guilty of rape involving a victim who is less than fourteen (14) years
26 of age under this section shall be sentenced to a minimum term of
27 imprisonment of twenty-five (25) years.

28 (d)(1) A court may issue a permanent no contact order when:

29 (A) A defendant pleads guilty or nolo contendere; or

30 (B) All of the defendant's appeals have been exhausted and
31 the defendant remains convicted.

32 (2) If a judicial officer has reason to believe that mental
33 disease or defect of the defendant will or has become an issue in the case,
34 the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-
35 328, or both.

36 (e) A person convicted of rape is subject to § 9-10-121.

1 (f) The offense of rape under this section is a lesser included
 2 offense to rape of a child by forcible compulsion, § 5-14-114.

3
 4 SECTION 8. Arkansas Code Title 5, Chapter 14, Subchapter 1, is amended
 5 to add an additional section to read as follows:

6 5-14-114. Rape of a child by forcible compulsion.

7 (a) As used in this section, "child" means a person who is less than
 8 fourteen (14) years of age.

9 (b) A person commits rape of a child by forcible compulsion if he or
 10 she engages in sexual intercourse or deviate sexual activity with a child by
 11 forcible compulsion.

12 (c)(1) Rape of a child by forcible compulsion is punishable as
 13 follows:

14 (A) If the defendant was eighteen (18) years of age or
 15 older at the time he or she committed the rape of a child by forcible
 16 compulsion:

17 (i) Death; or

18 (ii) Life imprisonment without parole under §§ 5-4-
 19 601 – 5-4-605, 5-4-607, and 5-4-608; or

20 (B) If the defendant was younger than eighteen (18) years
 21 of age at the time he or she committed the rape of a child by forcible
 22 compulsion, life imprisonment with the possibility of parole after serving a
 23 minimum of thirty (30) years' imprisonment.

24 (2) For any purpose other than disposition under §§ 5-4-101 – 5-
 25 4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-
 26 4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-
 27 314, rape of a child by forcible compulsion is a Class Y felony.

28 (d)(1) A court may issue a permanent no contact order when:

29 (A) A defendant pleads guilty or nolo contendere; or

30 (B) All of the defendant's appeals have been exhausted and
 31 the defendant remains convicted.

32 (2) If a judicial officer has reason to believe that mental
 33 disease or defect of the defendant will or has become an issue in the case,
 34 the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-
 35 328, or both.

36 (e) A person convicted of rape of a child by forcible compulsion is

1 subject to § 9-10-121.

2
3 SECTION 9. Arkansas Code § 9-10-121 is amended to read as follows:

4 9-10-121. Termination of certain parental rights for putative fathers
5 convicted of rape.

6 (a) All rights of a putative father to custody, visitation, or other
7 contact with a child conceived as a result of a rape shall be terminated
8 immediately upon conviction of the rape in which the child was conceived
9 under § 5-14-103 or § 5-14-114.

10 (b) The biological mother of a child conceived as a result of rape may
11 petition the court under § 9-10-104 to reinstate the parental rights of a
12 putative father terminated under subsection (a) of this section.

13 (c) A putative father to a child conceived as a result of rape shall
14 pay child support as provided under § 9-10-109.

15 (d) A child conceived as a result of rape is entitled to:

16 (1) Child support under § 9-10-109; and

17 (2) Inheritance under the Arkansas Inheritance Code of 1969, §
18 28-9-201 et seq.

19
20 SECTION 10. Arkansas Code § 16-33-305 is amended to read as follows:

21 16-33-305. Challenge to trial jurors – Individual juror – Peremptory.

22 (a) The state shall be entitled to ten (10) peremptory challenges in
23 prosecutions for capital murder, § 5-10-101, treason, § 5-51-201, or rape of
24 a child by forcible compulsion, § 5-14-114, to six (6) peremptory challenges
25 in prosecutions for all other felonies, and to three (3) peremptory
26 challenges in prosecutions for misdemeanors.

27 (b) The defendant shall be entitled to twelve (12) peremptory
28 challenges in prosecutions for capital murder, § 5-10-101, treason, § 5-51-
29 201, or rape of a child by forcible compulsion, § 5-14-114, to eight (8)
30 peremptory challenges in prosecutions for all other felonies, and to three
31 (3) peremptory challenges in prosecutions for misdemeanors.

32
33 SECTION 11. Arkansas Code § 16-87-205(c)(1), concerning the Capital,
34 Conflicts, and Appellate Office, is amended to read as follows:

35 (c)(1)(A)(i) The Arkansas Public Defender Commission shall be
36 appointed by the trial court in ~~the following situation:~~

1 ~~(A)(i)~~ In a case involving capital murder cases, § 5-10-101,
 2 treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114,
 3 in which the death penalty is sought if a conflict of interest is determined
 4 by the court to exist between the trial public defender's office and the
 5 indigent person or if for any other reason the court determines that the
 6 trial public defender cannot or should not represent the indigent person.

7 (ii) The representation may be in conjunction with
 8 appointed private attorneys.

9 ~~(iii)(B)~~ In a case involving capital murder cases, § 5-10-101,
 10 treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114,
 11 unless the prosecuting attorney informs the circuit court at the arraignment
 12 of the defendant that the death penalty will not be sought, it shall be
 13 presumed for purposes of this section that the death penalty will be sought.

14 ~~(iv)(a)(C)(i)~~ The executive director may assign the Capital,
 15 Conflicts, and Appellate Office, a trial public defender from another area, a
 16 private attorney whose name appears on a list of attorneys maintained by the
 17 commission, or a combination of private and public defender attorneys to
 18 represent the indigent person.

19 ~~(b)(ii)~~ The executive director shall notify the trial
 20 court of the assignment, and an order reflecting the assignment shall be
 21 entered.

22
 23 SECTION 12. Arkansas Code § 16-87-212(c), concerning court fees and
 24 expenses, is amended to read as follows:

25 (c) At the discretion of the commission, expenses in a case involving
 26 capital murder cases, § 5-10-101, treason, § 5-51-201, or rape of a child by
 27 forcible compulsion, § 5-14-114, and all proceedings under the Arkansas Rules
 28 of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

29
 30 SECTION 13. Arkansas Code § 16-87-218(c)(1) and (2), concerning the
 31 costs for legal services provided by the Arkansas Public Defender Commission,
 32 are amended to read as follows:

33 (1) Capital murder, § 5-10-101, treason, § 5-51-201, or rape of
 34 a child by forcible compulsion, § 5-14-114, in which the death penalty was
 35 given, including any appeal and post-conviction remedy, twelve thousand five
 36 hundred dollars (\$12,500);

(2) Capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, in which the death penalty was not given, murder in the first degree, § 5-10-102, or Class Y felony:

(A) For an early disposition, five hundred dollars (\$500);

(B) For a negotiated plea or disposition before trial, two thousand five hundred dollars (\$2,500); or

(C) For a trial or an extended matter, seven thousand five hundred dollars (\$7,500);

SECTION 14. Arkansas Code § 16-90-803(b)(5), concerning voluntary presumptive standards in sentencing, is amended to read as follows:

(5) Capital murder ~~is~~, § 5-10-101, treason, § 5-51-201, and rape of a child by forcible compulsion, § 5-14-114, are excluded from the sentencing standards and ~~is~~ are subject to the procedures in § 5-4-601 et seq.

SECTION 15. Arkansas Code § 16-91-110(b)(2), concerning bail bonds, is amended to read as follows:

(2) When a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense of capital murder, § 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, § 5-14-114, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

SECTION 16. Arkansas Code § 16-91-202(e)(2)(A), concerning the qualifications of defense counsel in a capital case, is amended to read as follows:

(2)(A) In all such cases, the attorney shall have been admitted to practice law for not less than five (5) years and shall have had no fewer than three (3) years' experience in the actual handling of capital murder or other capital case prosecutions or capital murder or other capital case post-conviction proceedings in Arkansas courts.

SECTION 17. Arkansas Code § 16-93-204(d)(2)(A), concerning executive clemency, is amended to read as follows:

(2)(A) Before considering an application for a pardon or

1 recommending a commutation of sentence of a person who was convicted of
2 capital murder, § 5-10-101, treason, § 5-51-201, rape of a child by forcible
3 compulsion, § 5-14-114, or a Class Y felony, Class A felony, or Class B
4 felony, the board shall notify the victim of the crime or the victim's next
5 of kin, if he or she files a request for notice with the prosecuting
6 attorney.

7
8 SECTION 18. Arkansas Code § 16-93-207(d)(1)(B), concerning
9 applications for pardon, commutation of sentence, and remission of fines and
10 forfeitures, is amended to read as follows:

11 (B) Eight (8) years from the date of the denial if the
12 applicant is serving a sentence of life without parole for capital murder, §
13 5-10-101, treason, § 5-51-201, or rape of a child by forcible compulsion, §
14 5-14-114.

15
16 SECTION 19. Arkansas Code § 16-93-612(e), concerning the date of an
17 offense and which parole eligibility statute will govern, is amended to add
18 an additional subdivision to read as follows:

19 (5) If the felony is rape of a child by forcible compulsion, §
20 5-14-114, and the offense occurred on or after the effective date of this
21 act, § 16-93-623 governs the person's parole eligibility.

22
23 SECTION 20. Arkansas Code Title 16, Chapter 93, Subchapter 6, is
24 amended to add an additional section to read as follows:

25 16-93-623. Parole eligibility – Rape of a child by forcible
26 compulsion.

27 An inmate sentenced for rape of a child by forcible compulsion, § 5-14-
28 114, on or after the effective date of this act is not eligible for parole.