



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for HB1934 Sponsored by Representative Miller

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

Impact Summary¹ Cannot be determined. The proposed bill increases the penalty for some courses of conduct by which a person can commit certain sex offenses involving a child. Available data does not adequately distinguish between the circumstances under which these criminal offenses were committed. For this reason, the projected impact of the proposed bill cannot be determined.

Change from Current Law² Amends various provisions of Title 5 of the Arkansas Code Annotated to increase the penalty to life without the possibility of parole for certain sex offenses involving a child. Under the proposed bill, a defendant who was eighteen (18) years of age or older at the time of offense and who was convicted of certain Class Y felonies in which the victim was a minor at the time of the offense shall be sentenced to life without the possibility of parole. The offenses with an increased penalty under the proposed bill are as follows:

- *A.C.A. § 5-14-103 (a)(1), Rape involving forcible compulsion.* Under current law, Rape is a Class Y felony and has a minimum sentence of twenty-five (25) years if the victim is less than fourteen (14) years of age. Under the proposed bill, Rape involving forcible compulsion is a Class Y felony punishable by life without the possibility of parole if the victim is less than eighteen (18) years of age.
- *A.C.A. § 5-18-103, Trafficking of persons.* Under current law, Trafficking of persons is a Class Y felony if the victim is less than eighteen (18) years of age or a Class A felony if otherwise committed. Under the proposed bill, Trafficking of persons is a Class Y felony punishable by life without the possibility of parole if the victim is less than eighteen (18) years of age.
- *A.C.A. § 5-27-303, Engaging children in sexually explicit conduct for use in visual or print medium.* Under current law, Engaging children in sexually explicit conduct for use in visual or print medium is a Class B felony for the first offense or a Class A felony for a subsequent offense. Under the proposed bill, Engaging children in sexually explicit conduct for use in visual or print medium is a Class Y felony punishable by life without the possibility of parole if the victim is less than eighteen (18) years of age.
- *A.C.A. § 5-27-305, Transportation of minors for prohibited sexual conduct.* Under current law, Transportation of minors for prohibited sexual conduct is a Class A felony. Under the proposed bill, Transportation of minors for prohibited sexual conduct is a Class Y felony punishable by life without the possibility of parole if the victim is less than eighteen (18) years of age.
- *A.C.A. § 5-27-403, Producing, directing, or promoting a sexual performance by a child.* Under current law, Producing, directing, or promoting a sexual performance by a child is a Class A felony. Under the

¹ This impact assessment was prepared 4/19/2021 6:15 PM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Department of Corrections and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC costs; and “major” = would require budgetary increases for ADC costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y 10-40 years or life
Class A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors
Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

proposed bill, Producing, directing, or promoting a sexual performance by a child is a Class Y felony punishable by life without the possibility of parole if the victim is less than eighteen (18) years of age.

- *A.C.A. § 5-27-602, Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child.* Under current law, Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child is a Class C felony for the first offense or a Class B felony for a subsequent offense. Under the proposed bill, Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child is a Class Y felony if the person 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, 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. If the victim is less than eighteen (18) year of age, the offense is punishable by life imprisonment without the possibility of parole.
- *A.C.A. § 5-27-605, Computer exploitation of a child in the first degree.* Under current law, Computer exploitation of a child in the first degree is a Class B felony for the first offense and a Class A felony for a subsequent offense. Under the proposed bill, Computer exploitation of a child in the first degree is a Class Y felony punishable by life without the possibility of parole if the victim is less than eighteen (18) years of age.

Impact Information The proposed bill increases the penalty for some courses of conduct by which a person can commit certain sex offenses involving a child. For some offenses amended by the proposed bill, available data does not adequately distinguish between the circumstances under which these criminal offenses were committed. While an increase of this magnitude will certainly have an impact on correctional resources, data does not provide enough detail on which to formulate a projection. For this reason, the projected impact of the proposed bill cannot be determined. The following data is provided for informational purposes only.

The Division of Correction (ADC) reports that there are currently:

- 1,554 inmates serving a term of incarceration for a violation of A.C.A. § 5-14-103, Rape, as currently written. This includes all offender serving a term of incarceration for Rape and is not specific to Rape by means of forcible compulsion with a minor victim.
- Four (4) inmates serving a term of incarceration for a violation of A.C.A. § 5-18-103, Trafficking of persons, victim is a minor.
- Twenty-one (21) inmates serving a term of incarceration for a violation of A.C.A. § 5-27-303, Engaging children in sexually explicit conduct for use in visual or print medium.
- One (1) inmate serving a term of incarceration for a violation of A.C.A. § 5-27-305, Transportation of minors for prohibited sexual conduct.
- One (1) inmate serving a term of incarceration for a violation of A.C.A. § 5-27-403, Producing, directing, or promoting a sexual performance by a child.
- 196 inmates serving a term of incarceration for a violation of A.C.A. § 5-27-602, Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child. This includes all offender serving a term of incarceration for Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child and is not specific the conduct re-classified as a Class Y felony under the proposed bill.
- Ten (10) inmates serving a term of incarceration for a violation of A.C.A. § 5-27-605, Computer exploitation of a child. This includes all instances of Computer exploitation of a child, not just the specific conduct re-classified as a Class Y felony under the proposed bill.