



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for SB464 Sponsored by Senator Rice

Subtitle CONCERNING THE DEFINITION OF “SEXUAL CONTACT” AS IT PERTAINS TO CERTAIN SEXUAL OFFENSES.

Impact Summary¹ Cannot be determined. The proposed bill creates new courses of conduct by which a person can commit offenses in Chapter 14 of the Arkansas Criminal Code. The number of occurrences of this conduct is unknown. For this reason, the projected impact of the proposed bill cannot be determined.

Change from Current Law² Amends the definition of “Sexual contact” found in A.C.A. § 5-14-101 to include urinating, defecating, or ejaculating on another person for the purposes of sexual gratification. Under current law, sexual contact means an act of sexual gratification involving touching directly or through clothing, of the sex organs, buttocks, or anus of another person or the breast of a female. The term sexual contact is used in the following provisions in Chapter 14 of the Arkansas Criminal Code: A.C.A. § 5-14-110, Sexual indecency with a child, A.C.A. § 5-14-125, Sexual assault in the second degree, and A.C.A. § 5-14-127, Sexual assault in the fourth degree. [See attached for a complete reprint of these code sections.]

Impact Information The proposed bill creates new courses of conduct by which a person can commit the offenses of Sexual indecency with a child, Sexual assault in the second degree, and Sexual assault in the fourth degree. Data is unavailable as to the number of occurrences of the newly added conduct provisions. For this reason, the projected impact of the proposed bill cannot be determined. The following data is provided for informational purposes only.

The Administrative Office of the Courts reports that for the three (3) year period beginning January 1, 2017 and ending December 31, 2019, there were:

- 206 convictions for a violation of A.C.A. § 5-14-110, Sexual indecency with a child, a Class D felony.
- 915 convictions for a violation of A.C.A. § 5-14-125 (b)(1), Sexual assault in the second degree, a Class B felony.
- 11 convictions for a violation of A.C.A. § 5-14-125 (b)(2), Sexual assault in the second degree, a Class D felony.
- 141 convictions for a violation of A.C.A. § 5-14-127, Sexual assault in the fourth degree, a Class D felony.

The Division of Correction reports that there are currently:

- 47 inmates serving a term of incarceration for a violation of A.C.A. § 5-14-110, Sexual indecency with a child, a Class D felony. 22 of these inmates are serving a term of incarceration for which A.C.A. § 5-14-110 is the most serious offense.
- 835 inmates serving a term of incarceration for a violation of A.C.A. § 5-14-125 (b)(1), Sexual assault in the second degree, a Class B felony. 651 of these inmates are serving a term of incarceration for which A.C.A. § 5-14-125 (b)(1) is the most serious offense.
- 55 inmates serving a term of incarceration for a violation of A.C.A. § 5-14-127, Sexual assault in the fourth degree, a Class D felony. 28 of these inmates are serving a term of incarceration for which A.C.A. § 5-14-127 is the most serious offense.

¹ This impact assessment was prepared 3/9/2021 9:38 AM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas 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 inmate costs; and “major” = would require budgetary increases for ADC inmate 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

A.C.A. § 5-14-110. Sexual indecency with a child.

(a) A person commits sexual indecency with a child if:

(1) Being eighteen (18) years of age or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:

(A) Sexual intercourse;

(B) Deviate sexual activity; or

(C) **Sexual contact;**

(2)

(A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim;

(3) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to a minor, and the actor is:

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

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

(C) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust and authority over the minor;

(4) With the purpose to arouse or gratify his or her sexual desire or a sexual desire of another person, the person, being eighteen (18) years of age or older, causes or coerces a minor to expose his or her sex organs to the actor or another person, and the actor is:

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

(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 minor; or

(D) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor; or

(5) Being eighteen (18) years of age or older, the person causes or coerces another person who is less than fourteen (14) years of age to expose his or her sex organs or the breast of a female with the purpose to arouse or gratify a sexual desire of the actor or another person.

(b) Sexual indecency with a child is a Class D felony.

History

Acts 1975, No. 280, § 1810; A.S.A. 1947, § 41-1810; Acts 1995, No. 550, § 1; 2001, No. 1821, § 1; 2005, No. 1993, § 1; 2007, No. 531, § 1; 2009, No. 748, § 9; 2009, No. 758, § 1; 2016 (3rd Ex. Sess.), No. 18, § 1; 2016 (3rd Ex. Sess.), No. 19, § 1; 2017, No. 418, § 1; 2019, No. 910, §§ 668, 669.

A.C.A. § 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;
 - (B) Mentally defective; or
 - (C) Mentally incapacitated;
 - (3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is:
 - (A) Less than fourteen (14) years of age; and
 - (B) Not the person's spouse;
 - (4)
 - (A) Engages in sexual contact with a minor and the actor is:
 - (i) Employed with the Division of Correction, the Division of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;
 - (ii) 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;
 - (iii) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or
 - (iv) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.
 - (B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution;
 - (5)
 - (A) Being a minor, engages in sexual contact with another person who is:
 - (i) Less than fourteen (14) years of age; and
 - (ii) Not the person's spouse.
 - (B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:
 - (i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or
 - (ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older;
 - (6) Is a teacher, principal, athletic coach, or counselor in a public or private school in a grade kindergarten through twelve (K-12), in a position of trust or authority, and uses his or her position of trust or 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.

History

Acts 2001, No. 1738, § 3; 2003, No. 1323, § 1; 2003, No. 1720, § 2; 2009, No. 748, §§ 11-13; 2009, No. 758, § 3; 2011, No. 1129, § 1; 2013, No. 1086, § 2; 2017, No. 418, § 3; 2019, No. 910, § 671.

A.C.A. § 5-14-127. Sexual assault in the fourth degree.

- (a) A person commits sexual assault in the fourth degree if the person:
- (1) Being twenty (20) years of age or older:
 - (A) Engages in sexual intercourse or deviate sexual activity with another person who is:
 - (i) Less than sixteen (16) years of age; and
 - (ii) Not the person's spouse; or
 - (B) Engages in **sexual contact** with another person who is:
 - (i) Less than sixteen (16) years of age; and
 - (ii) Not the person's spouse; or
 - (2) Engages in **sexual contact** with another person who is not the actor's spouse, and the actor is employed with the Division of Correction, Division of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Division of Correction, Division of Community Correction, Department of Human Services, or a city or county jail.
- (b)
- (1) Sexual assault in the fourth degree under subdivisions (a)(1)(A) and (a)(2) of this section is a Class D felony.
 - (2) Sexual assault in the fourth degree under subdivision (a)(1)(B) of this section is a Class A misdemeanor if the person engages only in **sexual contact** with another person as described in subdivision (a)(1)(B) of this section.

History

Acts 2001, No. 1738, § 5; 2003, No. 1325, § 1; 2009, No. 630, § 1; 2019, No. 910, § 673.