



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for HB1124 Sponsored by Representative Vaught

Subtitle TO PROVIDE THAT SEXUAL INTERCOURSE OR DEVIATE SEXUAL ACTIVITY WITH CERTAIN MINORS CONSTITUTES SEXUAL ASSAULT IN THE SECOND DEGREE.

Impact Summary¹ Cannot be determined. The proposed bill amends courses of conduct and criminal penalties for occurrences for which available data is not sufficiently specific to determine a projected impact.

Change from Current Law² Amends criminal offenses found in Chapter 14 of Title 5 of the Arkansas Code Annotated to (1) increase the penalty for some courses of conduct currently constituting A.C.A. § 5-14-127, Sexual assault in the fourth degree by relocating the provisions to A.C.A. § 5-14-125, Sexual assault in the second degree, (2) raise the age for potential victims, and (3) statutorily eliminate a defense to prosecution. [see attached for complete reproduction of A.C.A. § 5-14-125 and § 5-14-127]

Under current law, a person commits Sexual assault in the fourth degree if, being twenty (20) years of age or older, he or she engages in in sexual intercourse or deviate sexual activity with a person who is less than sixteen (16) years of age and not the actor's spouse. Under the proposed bill, the statutory age of a potential victim is raised to less than seventeen (17) and this conduct constitutes the offense of Sexual assault in the second degree. Sexual assault in the second degree is a Class B felony, while Sexual assault in the fourth degree is a Class D felony. The proposed bill also provides that it is not a defense to prosecution for this course of conduct that the victim consented to the conduct.

Impact Information The proposed bill increases the penalties for some courses of conduct, adds additional potential victims, and statutorily eliminates a defense to prosecution. While data is reported on the number of convictions for A.C.A. § 5-14-127, Sexual assault in the fourth degree, the data is not specific as to which course of conduct resulted in conviction or imprisonment. In addition, data regarding the number of instances in which a person was not convicted of sexual assault in the fourth degree because the victim was sixteen (16) years of age is not available. For these reasons, the projected impact of the proposed bill cannot be determined. The following data is for informational purposes only.

¹ This impact assessment was prepared 1/24/2023 7:34 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

The Administrative Office of the Courts reports the following for the three (3) year period beginning January 1, 2020, and ending December 31, 2022:

Offense / A.C.A	Felony Class	Number of Convictions
Sexual assault in the second degree § 5-14-125	B	5
Sexual assault in the second degree § 5-14-125(b)(1)	B	328
Sexual assault in the fourth degree A.C.A. § 5-14-127	D	77

The Division of Correction reports the following as of December 2, 2022:

Offense / A.C.A.	Felony Class	Total Number of Inmates with Sentence	Inmates for whom sentence is Primary Offense
Sexual assault in the second degree A.C.A. § 5-14-125	B	848	603
Sexual assault in the second degree A.C.A. § 5-14-125(b)(1)	B	245	180
Sexual assault in the fourth degree A.C.A. § 5-14-127	D	68	36

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 less than fourteen (14) years of age;
- (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; or
- (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; 2021, No. 615, § 1.

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.