



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for HB1164  
Sponsored by Representative C. Fite  
and Senator Collins-Smith**

**Subtitle** CONCERNING LEVEL 4 SEX OFFENDERS RESIDING NEAR A CHURCH OR OTHER PLACE OF WORSHIP.

**Impact Summary<sup>1</sup>** Undetermined.

**Change from current law<sup>2</sup>** Amends Arkansas Code Annotated § 5-14-128, Registered offender living near school, public park, youth center, or daycare prohibited. Under A.C.A. § 5-14-128(a)(2), this proposed bill makes it unlawful for a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a Level 4 offender to knowingly reside within two thousand feet (2000') of a church or other place of worship. Violation of A.C.A. § 5-14-128 is a Class D felony. See attached for current code provision.

Under the proposed bill, it is not a violation of this section if the property on which the sex offender resides is owned and occupied by the sex offender and was purchased prior to the date on which the church or other place of worship was established. However, this exclusion does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after the church or other place of worship is established. It is also not a violation of this section if the sex offender resides on property he or she owns prior to the effective date of this act.

**Impact Information**

As of January 23, 2015, the Arkansas Crime Information Center State Sex Offender Registry reports that there are currently 362 Level 4 offenders listed on the registry. These individuals would serve as the pool of possible offenders under this proposed bill.

The Administrative Office of the Courts reports that during calendar year 2014, there were eighteen (18) cases resulting in a conviction for violation of A.C.A. § 5-14-128, as currently written. These cases include both Level 3 and Level 4 sex offenders.

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<sup>1</sup> This impact assessment was prepared (1/28/2015, 5:16 p.m.) 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 Correction 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.

<sup>2</sup> Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

The Arkansas Department of Correction (ADC) reports that there are 38 inmates serving a term of incarceration for violating the residency requirements of the current version of A.C.A. § 5-14-128, which applies to Level 3 and Level 4 sex offenders.

The residency restrictions listed in this code provision have additional impacts on the correctional resources of the State. These restrictions prevent inmates who have reached their transfer eligibility date and have been approved for release by the Parole Board from actually being released. If an inmate is unable to parole out of the ADC due to these residency restrictions, the average daily cost of care per inmate for holding them beyond their transfer eligibility date is \$63.26 per day.

ADC reports that there are currently 44 Level 4 inmates who have been approved for parole but are still incarcerated because their parole plan has been denied due to the residency prohibitions listed in A.C.A. § 5-14-128. Using the average daily cost of care per inmate of \$63.26, it costs an additional \$2,783.44 per day to hold these inmates past their parole eligibility date.

Based solely upon admissions to ADC for a conviction of A.C.A. § 5-14-128, the impact of this proposed bill is projected to be minimal. However, when considering the totality of the impact of the residency restrictions of this provision, the impact on the correctional resources of the State cannot be determined.

**A.C.A. § 5-14-128. Registered offender living near school, public park, youth center, or daycare prohibited.**

(a) It is unlawful for a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a Level 3 or Level 4 offender to reside within two thousand feet (2,000') of the property on which any public or private elementary or secondary school, public park, youth center, or daycare facility is located.

(b) (1) It is not a violation of this section if the property on which the sex offender resides is owned and occupied by the sex offender and was purchased prior to the date on which the public or private elementary or secondary school, public park, youth center, or daycare facility was established.

(2) The exclusion in subdivision (b)(1) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after the public or private elementary or secondary school, public park, youth center, or daycare facility is established.

(c) (1) (A) With respect to a public or private elementary or secondary school or a daycare facility, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 16, 2003.

(B) With respect to a public park or youth center, it is not a violation of this section if the sex offender resides on property he or she owns prior to July 31, 2007.

(2) (A) The exclusion in subdivision (c)(1)(A) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after July 16, 2003.

(B) The exclusion in subdivision (c)(1)(B) of this section does not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense on or after July 31, 2007.

(d) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who knowingly violates a provision of this section is guilty of a Class D felony.

(e) (1) A person who is charged with violating this section shall be ordered as a condition of his or her release from custody not to return to the location where he or she was residing that was located within two thousand feet (2,000') of a public or private elementary or secondary school, public park, youth center, or daycare facility until the charge is adjudicated.

(2) The court having jurisdiction over the charge may order that the defendant be allowed to return to his or her residence before the adjudication of the charge if good cause is shown.

(f) As used in this section:

(1) "Public park" means any property owned or maintained by this state or a county, city, or town in this state for the recreational use of the public; and

(2) "Youth center" means any building, structure, or facility owned or operated by a not-for-profit organization or by this state or a county, city, or town in this state for use by minors to promote the health, safety, or general welfare of the minors.

HISTORY: Acts 2003, No. 330, § 3; 2007, No. 818, § 1; 2009, No. 1406, § 1.