



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for HB1742 Sponsored by Representative Lundstrum

Subtitle CONCERNING SEXUAL ACTS WITH A MINOR; CONCERNING THE AGE AT WHICH A MINOR MAY LAWFULLY CONSENT TO A SEXUAL ACT.

Impact Summary¹ Cannot be determined. The proposed bill makes significant changes to several provisions of the Arkansas Criminal Code, including creating new courses of conduct, amending existing courses of conduct, and increasing penalties for existing courses of conduct. Available data is not sufficient to determine the projected impact of the proposed bill.

Change from Current Law² Amends several provisions in Title 5 of the Arkansas Code Annotated regarding sexual intercourse, deviate sexual activity, and sexual contact with minors. Please note that this impact will only consider amended provisions and will not detail those provisions which are unchanged by the proposed bill. The proposed bill amends A.C.A. § 5-14-110, Sexual indecency with a child, a Class D felony, to raise the age of a person who may be a victim of Sexual indecency of a child from less than fifteen (15) years of age to less than eighteen (18) years of age and to create an affirmative defense if the offender is within three (3) years of the age of the victim.

The proposed bill creates a new course of conduct by which a person can commit A.C.A. § 5-14-124, Sexual assault in the first degree. Under the proposed bill, a person commits the offense of Sexual assault in the first degree if the person is eighteen (18) years of age or older and engages in sexual intercourse or deviate sexual activity with a person who is fourteen (14) years of age or older but less than eighteen (18) years of age and who is not the actor's spouse. It is an affirmative defense to this proposed new course of conduct that the actor was not more than three (3) years older than the victim.

The proposed bill amends a course of conduct by which a person can commit A.C.A. § 5-14-125, Sexual assault in the second degree. Under current law, a person commits the offense of Sexual assault in the second degree if he or she, being eighteen (18) years of age or older, engages in sexual contact with another person who is less than fourteen (14) years of age and not the person's spouse. Under the proposed bill, a person commits the offense of Sexual assault in the second degree if he or she, being eighteen (18) years of age or older, engages in sexual contact with a person who is less than fourteen (14) years of age, regardless of whether the parties are married.

The proposed bill amends a course of conduct by which a person can commit A.C.A. § 5-14-125, Sexual assault in the second degree. Under current law, a person commits the offense of Sexual assault in the second degree if, being a minor, he or she engages in sexual contact with another person who is less than fourteen (14) years of age and not the person's spouse. Under the proposed bill, a person commits the offense of Sexual assault in

¹ This impact assessment was prepared 3/29/2021 2:32 PM 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 second degree if, being a minor, he or she engages in sexual intercourse or deviate sexual activity with another person who is less than fourteen (14) years of age. Under current law, it is an affirmative defense that the actor was not more than three (3) or four (4) years older than the victim, depending on the age of the victim. Under the proposed bill, the affirmative defense only applies if the actor is not more than two (2) years older than the victim, regardless of the age of the victim. The proposed bill also increases the penalty for A.C.A. § 5-14-125, Sexual assault in the second degree if committed by a minor against a victim who is less than fourteen (14) years of age and not the actor's spouse from a Class D felony to a Class C felony.

The proposed bill amends a course of conduct by which a person can commit A.C.A. § 5-14-126, Sexual assault in the third degree. Under current law, a person commits the offense of sexual assault in the third degree if he or she, being a minor, engages in sexual intercourse or deviate sexual activity with another person who is less than fourteen (14) years of age and not the person's spouse. Under the proposed bill, a person commits the offense of Sexual assault in the third degree if he or she, being a minor, engages in sexual contact with a person who is less than fourteen (14) years of age. Under the proposed bill, the amended course of conduct is a Class D felony.

The proposed bill creates a new course of conduct by which a person can commit A.C.A. § 5-14-126, Sexual assault in the third degree. Under the proposed bill, a person commits the offense of Sexual assault in the third degree if he or she, being eighteen (18) years of age or older, engages in sexual contact with a person who is fourteen (14) years of age or older but less than eighteen (18) years of age and who is not the actor's spouse. It is an affirmative defense that the actor was not more than two (2) years older than the victim. Under the proposed bill, this conduct is a Class C felony.

The proposed bill amends a course of conduct by which a person can commit A.C.A. § 5-14-127, Sexual assault in the fourth degree. Under current law, a person commits the offense of Sexual assault in the fourth degree if he or she, being twenty (20) years of age or older, engages in sexual intercourse, deviate sexual activity, or sexual contact with another person who is less than sixteen (16) years of age and not the person's spouse. Under the proposed bill, a person commits the offense of Sexual assault in the fourth degree if he or she, being a minor, engages in sexual intercourse or deviate sexual activity with another minor who is not the actor's spouse. Under current law, Sexual assault in the fourth degree is a Class A misdemeanor if the person engages only in sexual contact or a Class D felony if otherwise committed. The proposed bill eliminates the Class A misdemeanor, making any violation a Class D felony.

Impact Information The proposed bill significantly re-writes various provisions in the Arkansas Criminal Code regarding sexual intercourse, deviate sexual activity, and sexual contact with minors. The ages at which a person can be a perpetrator or victim of these offenses is changed, some criminal penalties are increased, and sexual intercourse and deviate sexual activity between minors is criminalized as a Class D felony. While it is likely that the proposed bill will have an impact on correctional resources, data is unavailable regarding the number of occurrences of the new courses of conduct and available data for amended courses of conduct does not provide the level of detail necessary to determine an impact. For these reasons, the projected impact of the proposed bill cannot be determined.