

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/21/13
A Bill

SENATE BILL 829

By: Senators Maloch, Irvin
By: Representative Williams

For An Act To Be Entitled

AN ACT TO IMPLEMENT THE STATUTORY CHANGES RECOMMENDED BY THE TASK FORCE ON ABUSED AND NEGLECTED CHILDREN; TO CLARIFY WHO IS A MANDATED REPORTER; TO CLARIFY CRIMINAL STATUTES CONCERNING SEXUAL ASSAULT IN THE SECOND, THIRD, AND FOURTH DEGREE, CHILDREN ENGAGED IN SEXUALLY EXPLICIT CONDUCT FOR USE IN VISUAL OR PRINT MEDIUM, AND THE POSSESSION OF SEXUALLY EXPLICIT DIGITAL MATERIAL; TO MODIFY THE REQUIREMENTS FOR A CHILD ABUSE PREVENTION CURRICULUM; TO MAKE CHANGES TO THE CHILD MALTREATMENT ACT, INCLUDING THE UNLAWFUL RESTRICTION OF CHILD ABUSE REPORTING AND MANDATED REPORTERS; AND FOR OTHER PURPOSES.

Subtitle

TO IMPLEMENT THE STATUTORY CHANGES RECOMMENDED BY THE TASK FOR ON ABUSED AND NEGLECTED CHILDREN.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 5-1-109(b)(3), concerning the statute of limitations for misdemeanors, is amended to read as follows:

(3)(A) Misdemeanor or violation, one (1) year.

(B) However, for failure to notify by a mandated reporter in the first degree, § 12-18-201, and failure to notify by a mandated reporter in the second degree, § 12-18-202, the period of limitation is ten



(10) years after the child victim reaches eighteen (18) years of age if the child in question was subject to child maltreatment; and

SECTION 2. Arkansas Code § 5-14-125(a)(6), concerning sexual assault in the second degree, is amended to read as follows:

(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 engages uses his or her position of trust or authority over the victim to engage in sexual contact with ~~another person~~ a victim who is:

(A) A student enrolled in the public or private school;

and

(B) Less than twenty-one (21) years of age.

SECTION 3. Arkansas Code § 5-27-303(a), concerning engaging children in sexually explicit conduct for use in visual or print medium, is amended to read as follows:

(a) Any person eighteen (18) years of age or older who employs, uses, persuades, induces, entices, or coerces any child to engage in or who has a child assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual or print medium depicting the sexually explicit conduct is guilty of a:

(1) Class B felony for the first offense; and

(2) Class A felony for a subsequent offense.

SECTION 4. Arkansas Code Title 5, Chapter 27, Subchapter 6, is amended to add an additional section to read as follows:

5-27-609. Possession of sexually explicit digital material.

(a) As used in this section:

(1) "Juvenile" means a person under eighteen (18) years of age;

and

(2) "Nudity" means a:

(A) Showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering;

(B) Showing of the female breast with less than fully opaque covering of any portion of the female breast below the top of the

nipple; or

(C) Depiction of covered male genitals in a discernibly turgid state.

(3)(A) "Sexually explicit digital material" means any photograph, digitized image, or visual depiction of a juvenile in:

(i) In any condition of nudity; or

(ii) Involved in any prohibited sexual act.

(B) The distribution of sexually explicit digital material by a juvenile may commonly be referred to as "sexting".

(b) A juvenile commits the offense of possession of sexually explicit digital material if the juvenile *purposefully* creates, produces, distributes, presents, transmits, posts, exchanges, disseminates, or possesses through a computer, wireless communication device, or digital media, any sexually explicit digital material.

(c) It is an affirmative defense to the offense of possession of sexually explicit digital material that:

(1) A juvenile:

(A) Has not solicited the visual depiction;

(B) Does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction; and

(C) Deletes or destroys the visual depiction upon receipt;

or

(2) A juvenile:

(A) Creates a visual depiction of himself or herself; and

(B) Does not subsequently distribute, present, transmit, post, print, disseminate, or exchange the visual depiction.

(d)(1) Possession of sexually explicit digital material is a Class A misdemeanor.

(2) A juvenile who pleads guilty or nolo contendere to or is found guilty of violating this section may be ordered to eight (8) hours of community service if it is the first offense for the juvenile.

SECTION 5. Arkansas Code § 6-64-418 is amended to read as follows:

6-64-418. College of Public Health collaboration.

It is recommended that the Health Behavior/Health Education Department of the Fay W. Boozman College of Public Health of the University of Arkansas

for Medical Sciences collaborate with each education service cooperative, community health agencies, school nurses, school counselors, and educators employed in public and private schools to introduce age-appropriate, research-supported, child abuse prevention curriculum to and on behalf of the children of Arkansas in the public and private schools.

SECTION 6. Arkansas Code § 12-18-204 is amended to read as follows:
12-18-204. Unlawful restriction of child abuse reporting.

(a)(1) ~~A person employed at a school, Head Start program, or day care facility~~ An employer or supervisor of an employee identified as a mandated reporter commits the offense of unlawful restriction of child abuse reporting if he or she:

(A) Prohibits a mandated reporter under this chapter from making a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline;

(B) Requires that a mandated reporter under this chapter receive permission ~~from the person~~ or notify a person before the mandated reporter makes a report of child maltreatment or suspected child maltreatment to the Child Abuse Hotline; or

(C) Knowingly retaliates against a mandated reporter under this chapter for reporting child maltreatment or suspected child maltreatment to the Child Abuse Hotline.

(2)(A) Nothing in this section shall prohibit any person or institution from requiring a mandatory reporter employed or serving as a volunteer for a person or institution to inform a representative of that person or institution that the reporter has made a report to the Child Abuse Hotline.

(B) Information disclosed to a person or institution under subdivision (a)(2)(A) of this section shall not be shared outside the organization and may only be shared within the organization to protect the health, safety, and welfare of the child.

(b) Unlawful restriction of child abuse reporting is a Class A misdemeanor.

SECTION 7. Arkansas Code § 12-18-402(b)(16)-(23), concerning mandated reporters, is amended to read as follows:

- (16) A mental health professional or paraprofessional;
- (17) An osteopath;
- (18) A peace officer;
- (19) A physician;
- (20) A prosecuting attorney;
- (21) A resident intern;
- (22) A public or private school counselor;
- (23) A school official, including without limitation
institutions of higher education;

SECTION 8. Arkansas Code § 12-18-402(c), concerning mandated reporters, is amended to read as follows:

(c)(1) A privilege or contract shall not prevent a person from reporting child maltreatment when he or she is a mandated reporter and required to report under this section.

(2) ~~A school, Head Start program, or day care facility~~ An employer or supervisor of an employee identified as a mandated reporter shall not prohibit an employee or a volunteer from directly reporting child maltreatment to the Child Abuse Hotline.

(3) ~~A school, Head Start program, or day care facility~~ An employer or supervisor of an employee identified as a mandated reporter shall not require an employee or a volunteer to obtain permission or notify any person, including an employee or a supervisor, before reporting child maltreatment to the Child Abuse Hotline.

/s/Maloch