

State of Arkansas
92nd General Assembly
Regular Session, 2019

A Bill

HOUSE BILL 1635

By: Representatives Petty, Dotson

For An Act To Be Entitled

AN ACT CONCERNING AN INCREASE IN THE SENTENCING RANGE FOR REPEAT FELONY SEX OFFENDERS; CONCERNING SEX OFFENDER REGISTRATION REQUIREMENTS; CONCERNING SEX OFFENSES AND SEX OFFENDERS; AND FOR OTHER PURPOSES.

Subtitle

CONCERNING AN INCREASE IN THE SENTENCING RANGE FOR REPEAT FELONY SEX OFFENDERS; CONCERNING SEX OFFENDER REGISTRATION REQUIREMENTS; AND CONCERNING SEX OFFENSES AND SEX OFFENDERS.

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

SECTION 1. Arkansas Code § 5-4-501(a), concerning sentencing for a felony when the person is a habitual offender, is amended to read as follows:

(a)(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (a)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies or who has been found guilty of more than one (1) but fewer than four (4) felonies;

(B) A defendant who:



(i) Is convicted of any felony enumerated in subsection (c) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (c) of this section or who has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (c) of this section; ~~or~~

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (d) of this section or has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (d) of this section;

(D) A defendant who is convicted of a Class A felony, Class B felony, Class C felony, or Class D felony for which he or she is required to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq., and has been found guilty of more than one (1) felony that would require a person to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq.; or

(E) A defendant who is convicted of a Class Y felony for which he or she is required to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq., and has been found guilty of more than one (1) felony that would require a person to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq.

(2) The extended term of imprisonment for a defendant described in ~~subdivision (a)(1)~~ subdivisions (a)(1)(A)-(C) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than sixty (60) years, or life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than fifty (50) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than thirty (30) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than twenty (20)

years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than twelve (12) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than five (5) years more than the maximum sentence for the unclassified felony; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment not less than ten (10) years nor more than fifty (50) years, or life.

(3) Unless the defendant is liable for a longer term of imprisonment under subdivisions (a)(2)(A)-(C) of this section, the extended term of imprisonment for a defendant described under subdivision (a)(1)(D) of this section is the term of years designated for an offense one (1) classification higher than the offense for which he or she was convicted.

(4) The extended term of imprisonment for a defendant described under subdivision (a)(1)(E) of this section is not less than fifteen (15) years nor more than sixty (60) years, or life.

SECTION 2. Arkansas Code § 5-4-501(b), concerning sentencing for a felony when the person is a habitual offender, is amended to read as follows:

(b)(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and to an extended term of imprisonment as set forth in subdivision (b)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than a felony enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of four (4) or more felonies or who has been found guilty of four (4) or more felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (c) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (c) of this section; ~~or~~

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (d) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (d) of this section;

(D) A defendant who is convicted of a Class A felony, Class B felony, Class C felony, or Class D felony for which he or she is required to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq., and has been found guilty of more than one (1) felony that would require a person to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq.; or

(E) A defendant who is convicted of a Class Y felony for which he or she is required to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq., and has been found guilty of more than one (1) felony that would require a person to register as a sex offender under the Sex Offender Registration Act, § 12-12-901 et seq.

(2) The extended term of imprisonment for a defendant described in ~~subdivision (b)(1)~~ subdivisions (b)(1)(A)-(C) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than sixty (60) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than forty (40) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than thirty (30) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than fifteen (15) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than two (2) times the maximum sentence for the unclassified felony offense; and

(G) For a conviction of an unclassified felony punishable

by life imprisonment, a term of imprisonment not less than ten (10) years nor more than fifty (50) years, or life.

(3) Unless the defendant is liable for a longer term of imprisonment under subdivisions (b)(2)(A)-(C) of this section, the extended term of imprisonment for a defendant described under subdivision (b)(2)(D) of this section is the term of years designated for an offense one (1) classification higher than the offense for which he or she was convicted.

(4) The extended term of imprisonment for a defendant described under subdivision (b)(1)(E) of this section is not less than fifteen (15) years nor more than sixty (60) years, or life.

SECTION 3. Arkansas Code § 5-4-501, concerning habitual offender sentences, is amended to add an additional subsection to read as follows:

(i) A person classified as a habitual offender under subsection (a) or subsection (b) of this section who committed an offense of rape in which the victim was less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of thirty (30) years.

SECTION 4. Arkansas Code § 5-14-124(a), concerning the elements of the offense of sexual assault in the first degree, is amended to read as follows:

(a) A person commits sexual assault in the first degree if:

(1) The person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is:

(A) Employed with the Department of Correction, the Department of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Human Services, any city or county jail or juvenile detention facility, or their contractors or agents;

(B) Employed by or contracted with the Department 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 victim ~~and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity;~~ or

(D) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim; or

(2) The person is a teacher, principal, athletic coach, or counselor in a public or private school in kindergarten through grade twelve (K-12) and the actor:

(A) Engages in sexual intercourse or deviate sexual activity with a person who is not the actor's spouse and the victim is:

(i) Less than twenty-one (21) years of age; and

(ii) A student enrolled in the public or private school employing the actor; and

(B) Is in a position of trust or authority over the victim and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity.

SECTION 5. Arkansas Code § 5-14-128(d), concerning the penalty for a registered sex offender living too close to a school, public park, youth center, daycare, or church or other place of worship, is amended to read as follows:

(d)(1) A violation of this section is a Class ~~D~~C felony.

(2) However, if a person has a prior conviction under this section or a prior conviction for an offense substantially similar to the offense under this section from another jurisdiction, the person upon conviction is guilty of a Class B felony.

SECTION 6. Arkansas Code § 12-12-904 is amended to read as follows:

12-12-904. Failure or refusal to comply with registration and reporting requirements ~~—Refusal to~~ or to cooperate with assessment process.

~~(a)(1)(A) A person is guilty of a Class C felony who:~~

~~(i) Fails to register or verify registration as required under this subchapter;~~

~~(ii) Fails to report in person a change of address, employment, education, or training as required under this subchapter;~~

~~(iii) Refuses to cooperate with the assessment process as required under this subchapter; or~~

~~(iv) Files false paperwork or documentation~~

~~regarding verification, change of information, or petitions to be removed from the registry.~~

~~(B)(i) Upon conviction, a sex offender who fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2) is guilty of a Class C felony.~~

(a) A person commits failure to comply with registration and reporting requirements or to cooperate with the assessment process under this subchapter if the person knowingly:

(1) Fails to:

(A) Register or verify registration as required by this subchapter; or

(B) Report in person a change of address, employment, education, or training as required by this subchapter;

(2) Refuses to cooperate with the assessment process as required by this subchapter;

(3) Files false paperwork or documentation:

(A) Regarding verification of registration or a change of information regarding registration; or

(B) As part of a petition to be removed from the sex offender registry; or

(4) Fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2).

~~(ii)(b) If a sex offender fails or refuses to provide any information necessary to update his or her registration file as required by § 12-12-906(b)(2), as soon as administratively feasible the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, or the Department of Human Services shall contact the local law enforcement agency having jurisdiction to report the violation of subdivision (a)(1)(B)(i) of this section.~~

(c)(1) Failure to comply with registration and reporting requirements or to cooperate with the assessment process is a Class C felony.

(2) A second or subsequent offense of failure to comply with registration and reporting requirements or to cooperate with the assessment process is a Class B felony.

~~(2)(d) It is an affirmative defense to prosecution if the person:~~

~~(A)~~(1) Delayed reporting a change in address because of:

~~(i)~~(A) An eviction;

~~(ii)~~(B) A natural disaster; or

~~(iii)~~(C) Any other unforeseen circumstance; and

~~(B)~~(2) Provided the new address to the local law enforcement agency having jurisdiction in person no later than five (5) business days after the person establishes residency.

~~(b)~~(e) Any agency or official subject to reporting requirements under this subchapter that knowingly fails to comply with the reporting requirements under this subchapter upon conviction is guilty of a Class B misdemeanor.