

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H3/29/21

A Bill

HOUSE BILL 1742

By: Representative Lundstrum

For An Act To Be Entitled

AN ACT CONCERNING SEXUAL ACTS WITH A MINOR;
CONCERNING THE AGE AT WHICH A MINOR MAY LAWFULLY
CONSENT TO A SEXUAL ACT; AND FOR OTHER PURPOSES.

Subtitle

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

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

*SECTION 1. Arkansas Code § 5-14-110 is amended to read as follows:
5-14-110. Sexual indecency with a child.*

(a) A person commits sexual indecency with a child if:

(1)(A) Being eighteen (18) years of age or older, the person solicits another person who is ~~less than fifteen (15) years of age~~ a minor or who is represented to be ~~less than fifteen (15) years of age~~ a minor to engage in:

~~(A)(1)~~ Sexual intercourse;

~~(B)(2)~~ Deviate sexual activity; or

~~(C)(3)~~ Sexual contact~~;~~.

(B) It is an affirmative defense to a prosecution under subdivision (a)(1)(A) of this section if the person is within three (3) years of age of the victim;

(2)(A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to another person who is ~~less than fifteen (15)~~



~~years of age~~ a minor.

(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim;

(3) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of another person, the person purposely exposes his or her sex organs to a minor, and the actor is:

(A) Employed with the Division of Correction, 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;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(C) The minor's parent or guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust and authority over the minor;

(4) With the purpose to arouse or gratify his or her sexual desire or a sexual desire of another person, the person, being eighteen (18) years of age or older, causes or coerces a minor to expose his or her sex organs to the actor or another person, and the actor is:

(A) 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;

(B) 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;

(C) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(D) The minor's parent or 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; or

(5)(A) Being eighteen (18) years of age or older, the person causes or coerces another person who is ~~less than fourteen (14) years of age~~ a minor to expose his or her sex organs or the breast of a female with the

purpose to arouse or gratify a sexual desire of the actor or another person.

(B) It is an affirmative defense to a prosecution under subdivision (a)(5)(A) of this section if the person is within three (3) years of age of the victim.

(b) Sexual indecency with a child is a Class D felony.

SECTION 2. Arkansas Code §§ 5-14-124 - 5-14-127 are amended to read as follows:

5-14-124. Sexual assault in the first degree.

(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 Division of Correction, the Division 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 Division of Correction, the Division of Community Correction, the ~~Department of Human Services~~ department, any city or county jail or juvenile detention facility, or their contractors or agents;

(B) 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;

(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; or

(3) 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.

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c) It is an affirmative defense to a prosecution under ~~subdivision~~ subdivisions (a)(1)(D) and (a)(3) of this section that the actor was not more than three (3) years older than the victim.

(d) Sexual assault in the first degree is a Class A felony.

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+

~~(A) Less~~ less than fourteen (14) years of age; ~~and~~

~~(B) Not the person's spouse;~~

(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~~ sexual intercourse or deviate sexual activity with another person who is+

~~(i) Less~~ 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)~~ two (2) 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~~ C 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.

5-14-126. Sexual assault in the third degree.

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

(1) Engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is:

(A) Employed with the Division of Correction, Division of

Community Correction, Department of Human Services, or any city or county jail, the victim is in the custody of the Division of Correction, Division of Community Correction, ~~Department of Human Services~~ department, or any city or county jail, and the actor 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;

(B) 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 person while the person is on probation or parole or for any other court-ordered reason;

(C) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, the victim is in the custody of the Division of Correction, Division of Community Correction, ~~Department of Human Services~~ department, or any city or county jail, and the actor 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) A mandated reporter under § 12-18-402(b) or a member of the clergy 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~~

(2)(A) Being a minor, engages in sexual ~~intercourse or deviate sexual activity~~ contact with another person who is+

- ~~(i) Less~~ less than fourteen (14) years of age; ~~and~~
- ~~(ii) Not the person's spouse.~~

(B) It is an affirmative defense under this subdivision (a)(2) *that the actor was not more than three (3) years older than the victim;* or

(3)(A) 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.

(B) It is an affirmative defense under this subdivision (a)(3) that the actor was not more than two (2) years older than the victim.

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c)(1) Sexual assault in the third degree is a Class G D felony if

committed under subdivision (a)(2)(A) of this section.

(2) Otherwise, sexual assault in the third degree is a Class C felony.

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 minor+

~~(A) Engages~~ engages in sexual intercourse or deviate sexual activity with another ~~person who is~~ minor who is not the actor's spouse

~~(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~~ department, 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.~~

/s/Lundstrum