

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1951

By: Representative Crawford

For An Act To Be Entitled

AN ACT TO AMEND THE CRIMINAL OFFENSE OF SEXUAL
INDECENCY WITH A CHILD; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE CRIMINAL OFFENSE OF SEXUAL
INDECENCY WITH A CHILD.

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

SECTION 1. Arkansas Code § 5-1-109(a)(1)(E), concerning the statute of limitations for the offense of sexual indecency with a child, is amended to read as follows:

(E) Sexual indecency with a child, § 5-14-110, if a felony offense;

SECTION 2. Arkansas Code § 5-4-703(a)(8), concerning an additional fine for an offense committed against a child or in the presence of a child, is amended to read as follows:

(8) Sexual indecency with a child, § 5-14-110, if the offense is a felony or Class A misdemeanor, indecent exposure, § 5-14-112, sexual assault in the third degree, § 5-14-126, or sexual assault in the fourth degree, § 5-14-127;

SECTION 3. Arkansas Code § 5-13-210(f), concerning the offense of introduction of a controlled substance into the body of another person, is amended to read as follows:

(f) Notwithstanding a provision of subsection (c) of this section, any



person is guilty of a Class Y felony who violates this section by introducing a controlled substance into the body of another person without that other person's knowledge or consent with the purpose of:

(1) Committing any felony sexual offense, as defined in Arkansas law;

(2) Engaging in any unlawful sexual act, as defined in § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110;

(3) Engaging in any unlawful sexual contact, as defined in § 5-14-101; or

(4) Engaging in any act involving a child engaging in sexually explicit conduct, as defined in § 5-27-302.

SECTION 4. Arkansas Code § 5-14-110 is amended to read as follows:

5-14-110. Sexual indecency with a child - Definitions.

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

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

(A) Sexual intercourse;

(B) Deviate sexual activity; or

(C) Sexual contact;

(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.

(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) Being eighteen (18) years of age or older, the person causes or coerces another person who is less than fourteen (14) years of age 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; or

(6) Being eighteen (18) years of age or older, the person knowingly exposes his or her sex organs to a minor of the opposite gender in a public changing facility; or

(7)(A) Being eighteen (18) years of age or older, the person enters into or remains in a public changing facility that is assigned to persons of the opposite gender while knowing a minor of the opposite gender is present in the public changing facility.

(B) Subdivision (7)(A) of this section does not apply to a person entering into or remaining in a public changing facility:

(i) With a minor under seven (7) years of age and

the person is the minor's parent, guardian, family member, or is otherwise authorized to care for the minor;

(ii) For maintenance or inspection purposes if the person is authorized to conduct maintenance or inspection of the public changing facility;

(iii) To render medical assistance;

(iv) To accompany a person needing assistance when the actor is the parent, guardian, family member, or is otherwise authorized to care for the person needing assistance;

(v) To receive assistance in using the public changing facility;

(vi) If the public changing facility has been temporarily designated for use by persons of the same gender as the person;
or

(vii) Who is a certified law enforcement or corrections officer accompanying a person of the opposite gender in his or her custody.

(b) Sexual indecency with a child is a:

(1) Class D felony under subdivisions (a)(1)-(5) of this section;

(2) Class A misdemeanor under subdivision (a)(6) of this section; and

(3) Class C misdemeanor under subdivision (a)(7) of this section.

(c) As used in this section:

(1) "Gender" means the physical condition of a person as being male or female that was stated on the person's birth certificate at the time the person was born; and

(2)(A) "Public changing facility" means a public or private facility that is held out as open to the public and designed to be used at a time during which a person may be in a state of undress in the presence of other persons.

(B) "Public changing facility" includes without limitation a restroom, bathroom, locker room, or shower room.

(C) "Public changing facility" does not include a private dressing area open to the public that is designed for changing into and out

of clothing that is for sale in a commercial establishment that engages in the sale of clothing.

SECTION 5. Arkansas Code § 5-14-201 is amended to read as follows:

5-14-201. Definitions.

As used in this subchapter:

(1) "Relevant medical record" means a medical record of a person charged with having committed a sex crime that contains information that may reveal a health risk to the victim; and

(2) "Sex crime" means any offense described in § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110, or § 5-70-101 et seq.

SECTION 6. Arkansas Code § 6-17-116 is amended to read as follows:

6-17-116. The Arkansas School Children Protection Act – Definitions.

(a) This section shall be known and may be cited as "The Arkansas School Children Protection Act".

(b) For purposes of this section:

(1) "Conviction" means having pleaded guilty or nolo contendere to or having been found guilty of committing a sexual offense against a minor or student; and

(2) A "sexual offense" is one described in § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110.

(c)(1) Any public school district employee who commits a sexual offense against a minor shall upon conviction be dismissed from employment and shall not thereafter be eligible for employment by any school in this state.

(2) Any public school teacher who commits a sexual offense under § 5-14-125(a)(6) shall upon conviction be dismissed from employment and shall not thereafter be eligible for employment by any school in this state.

SECTION 7. Arkansas Code § 6-17-410(c)(14), concerning a disqualifying offense for licensure to be a teacher, is amended to read as follows:

(14) Sexual indecency with a child as prohibited in § 5-14-110, if a felony offense;

SECTION 8. Arkansas Code § 6-17-414(b)(15), concerning a disqualifying offense for employment of nonlicense personnel of an educational entity, is amended to read as follows:

(15) Sexual indecency with a child as prohibited in § 5-14-110, if a felony offense;

SECTION 9. Arkansas Code § 9-28-409(e)(3)(Z)(Z), concerning criminal record and maltreatment checks under the Child Welfare Agency Licensing Act, is amended to read as follows:

(Z)(Z) Sexual offenses, § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110;

SECTION 10. Arkansas Code § 12-12-104(f)(2)(B), concerning the definition of "sex offense" as used in the retention and disposition of physical evidence in sex offense prosecutions, is amended to read as follows:

(B) Sexual indecency with a child, § 5-14-110, if a felony offense;

SECTION 11. Arkansas Code § 12-12-401(8), as amended by Acts 2021, No. 472, concerning the definition of "victim", is amended to read as follows:

(8) "Victim" means any person who has been a victim of any alleged sexual assault or incest as defined by § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110, and § 5-26-202.

SECTION 12. Arkansas Code § 12-12-903(12)(A)(i)(b), concerning the definition of "sex offense" under the Sex Offender Registration Act of 1997, is amended to read as follows:

(b) Sexual indecency with a child, § 5-14-110, if a felony offense;

SECTION 13. Arkansas Code § 12-12-1103(9), concerning the definition of "qualifying offense" under the State Convicted Offender DNA Data Base Act, is amended to read as follows:

(9)(A) "Qualifying offense" means any felony offense as defined

in the Arkansas Criminal Code or a sexual offense classified as a misdemeanor as defined by the Arkansas Criminal Code or a repeat offense as defined in this section, ~~and~~.

(B) "Qualifying offense" does not include a misdemeanor violation of sexual indecency with a child, § 5-14-110; and

SECTION 14. Arkansas Code § 16-42-101(b), concerning the admissibility of evidence of a victim's prior sexual past, is amended to read as follows:

(b) In any criminal prosecution under § 5-14-101 et seq., the Human Trafficking Act of 2013, § 5-18-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110, or § 5-26-202, or for criminal attempt to commit, criminal solicitation to commit, or criminal conspiracy to commit an offense defined in any of those sections, opinion evidence, reputation evidence, or evidence of specific instances of the victim's prior sexual conduct with the defendant or any other person, evidence of a victim's prior allegations of sexual conduct with the defendant or any other person, evidence of a person's prior sexual conduct when the person was a victim of human trafficking, which allegations the victim asserts to be true, or evidence offered by the defendant concerning prior allegations of sexual conduct by the victim with the defendant or any other person if the victim denies making the allegations is not admissible by the defendant, either through direct examination of any defense witness or through cross-examination of the victim or other prosecution witness, to attack the credibility of the victim, to prove consent or any other defense, or for any other purpose.

SECTION 15. Arkansas Code § 16-82-101(b)(1), concerning the testing for human immunodeficiency virus for a conviction of a sexual offense, is amended to read as follows:

(b)(1) Any person arrested and charged with violating §§ 5-14-103, and 5-14-110, if a felony offense, and §§ 5-14-124 – 5-14-127, 5-26-202, and 5-70-102 may be required by the court having jurisdiction of the criminal prosecution, upon a finding of reasonable cause to believe that the person committed the offense and subject to constitutional limitations, to be tested for the presence of human immunodeficiency virus (HIV) or any antibody to human immunodeficiency virus (HIV) unless the court determines that testing

the defendant would be inappropriate and documents the reasons for that determination in the court record.

SECTION 16. Arkansas Code § 16-90-1101(6)(B), concerning the definition of "sex offense" in conjunction with the rights of crime victims, is amended to read as follows:

(B) Sexual indecency with a child, § 5-14-110, if a felony offense;

SECTION 17. Arkansas Code § 16-93-305, as amended by Acts 2021, No. 499, is amended to read as follows:

16-93-305. Probation – Sex offender may not reside with minor victim.

(a) If a person enters a plea of guilty or nolo contendere to or is found guilty of a sexual offense under § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110, or incest, § 5-26-202, perpetrated against a minor and is otherwise eligible for probation, the person is prohibited as a condition of his or her probation from residing in a residence with any minor unless the court makes a specific finding that the person poses no danger to a minor residing in the residence.

(b) Upon violation of this condition of probation, the court may enter an adjudication of guilt and proceed as otherwise provided by law.

SECTION 18. Arkansas Code § 16-93-314(b)(2)(A), concerning the discharge of probation, is amended to read as follows:

(A) The person applying for discharge has been convicted of a sexual offense as defined by § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110; and

SECTION 19. Arkansas Code § 17-3-102(a)(16), concerning licensing restrictions based on criminal records, is amended to read as follows:

(16) Sexual indecency with a child as prohibited in § 5-14-110, if a felony offense.

SECTION 20. Arkansas Code § 17-14-203(12)(C)(i)(i), effective January 1, 2017, and concerning background checks for appraisers, is amended to read as follows:

(i) A sexually related crime or act under § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110;

SECTION 21. Arkansas Code § 17-17-312(f)(16), concerning a disqualifying offense for licensure for auctioneers, is amended to read as follows:

(16) Sexual indecency with a child, as prohibited in § 5-14-110, if a felony offense;

SECTION 22. Arkansas Code § 18-16-112(a)(4)(A)(ii), concerning the definition of "sex crime" concerning landlord and tenant law and protections for victims of domestic abuse, is amended to read as follows:

(ii) Sexual indecency with a child, § 5-14-110, if a felony offense;

SECTION 23. Arkansas Code § 20-13-1106(a)(1)(O), concerning a disqualifying offense for the Division of EMS and Trauma Systems of the Department of Health, is amended to read as follows:

(O) Sexual indecency with a child as prohibited in § 5-14-110, if a felony offense;

SECTION 24. Arkansas Code § 20-38-105(b)(16), concerning disqualification from employment in certain health related professions, is amended to read as follows:

(16) Any sexual offense, § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110;

SECTION 25. Arkansas Code § 21-15-102(f)(15), concerning a disqualifying offense for employment with a state agency in a position involving direct contact with children and with individuals with mental illnesses or developmental disabilities, is amended to read as follows:

(15) Sexual indecency with a child, as prohibited in § 5-14-110, if a felony offense;

SECTION 26. Arkansas Code § 21-15-103(g)(15), concerning a

disqualifying offense for employment as a public officer or employee, is amended to read as follows:

(15) Sexual indecency with a child, as prohibited in § 5-14-110, if a felony offense;

SECTION 27. Arkansas Code § 21-15-104(c)(8), concerning the waiver of exclusion or discharge requirement for persons in designated positions, is amended to read as follows:

(8) Sexual indecency with a child, § 5-14-110, if a felony offense;

SECTION 28. Arkansas Code § 25-1-112 is amended to read as follows:

25-1-112. Sexual offenses screened in criminal background checks.

Whenever a criminal background check is performed on a person under the provisions of any criminal background check requirement contained in this Code for employment, licensure, or any other purpose, the person may be disqualified for employment, licensure, or any other purpose for which the background check was conducted if it is determined that the person committed a violation of any sexual offense formerly proscribed under §§ 5-14-101 – 5-14-103, §§ 5-14-104 – 5-14-109 [repealed], § 5-14-110, if a felony offense, 5-14-111 – and 5-14-112, 5-14-113 – 5-14-119 [reserved], §§ 5-14-120 – 5-14-121 [repealed], and § 5-14-122 – 5-14-127, that is substantially equivalent to any sexual offense presently listed in §§ 5-14-101 – 5-14-103, §§ 5-14-104 – 5-14-109 [repealed], § 5-14-110, if a felony offense, §§ 5-14-111 – and 5-14-112, 5-14-113 – 5-14-119 [reserved], § 5-14-120 – 5-14-121 [repealed], and 5-14-122 – 5-14-127, and is an offense screened for in a criminal background check.