

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

State of Arkansas *As Engrossed: S2/22/23 S2/28/23 S3/2/23 H3/29/23*

94th General Assembly

A Bill

Regular Session, 2023

SENATE BILL 270

By: Senators J. Payton, Gilmore, Irvin, B. Johnson, M. Johnson, Stone, D. Wallace

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 offenses for which prosecution may commence at any time, is amended to read as follows:

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

SECTION 2. Arkansas Code § 5-4-703(a)(8), concerning an additional fine for certain offenses 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)(2), concerning the offense of introduction of a controlled substance into the body of another person, is amended to read as follows:

(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;

SECTION 4. Arkansas Code § 5-14-110(a), concerning the conduct that constitutes the offense of sexual indecency with a child, is amended to add an additional subdivision to read as follows:

(6)(A) Being eighteen (18) years of age or older, the person, for the purpose of arousing or gratifying a sexual desire of himself or herself or any other person, enters into or remains in a public changing facility that is assigned to persons of the opposite sex while knowing a minor of the opposite sex is present in the public changing facility.

(B) Subdivision (6)(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 if the person is the minor's parent, guardian, or 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, or family member, or is otherwise authorized to care for the person needing assistance;

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

(vi) If the public changing facility has been temporarily designated for use by persons of the same sex as the person entering into or remaining in the public changing facility; or

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

SECTION 5. Arkansas Code § 5-14-110(b), concerning the offense of sexual indecency with a child, is amended to read as follows:

(b) Sexual indecency with a child is a:

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

section; and

(2) Class C misdemeanor under subdivision (a)(6) of this section.

SECTION 6. Arkansas Code § 5-14-110, concerning the offense of sexual indecency with a child, is amended to add an additional subsection to read as follows:

(c) As used in this section:

(1) “Sex” means a person’s immutable biological sex as objectively determined by anatomy and genetics existing at the time of birth; 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 7. Arkansas Code § 5-14-201(2), concerning the definitions to be used in relation to medical records of a person charged with a sex crime, is amended to read as follows:

(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 8. Arkansas Code § 6-17-116(b)(2), concerning the definitions to be used under The Arkansas School Children Protection Act, is amended to read as follows:

(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.

SECTION 9. 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 the offense is a felony;

SECTION 10. Arkansas Code § 6-17-414(b)(15), concerning a disqualifying offense for employment of nonlicensed personnel of an educational entity, is amended to read as follows:

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

SECTION 11. Arkansas Code § 9-28-409(e)(3)(ZZ), concerning offenses that disqualify a person from having direct and unsupervised contact with a child in the care of a child welfare agency, is amended to read as follows:

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

SECTION 12. 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 the offense is a felony;

SECTION 13. Arkansas Code § 12-12-401(8), concerning the definitions to be used in medical-legal examinations that are conducted during the investigation and reporting of a sexual assault, 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 14. Arkansas Code § 12-12-903(13)(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 the offense is a felony;

SECTION 15. Arkansas Code § 12-12-1103(9), concerning the definitions to be used 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 16. Arkansas Code § 16-42-101(b), concerning the admissibility of evidence of a victim’s prior sexual conduct, is amended to read as follows:

(b) In a criminal prosecution under § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110, the Human Trafficking Act of 2013, § 5-18-101 et seq., 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 17. Arkansas Code § 16-82-101(b)(1)(A), concerning the testing for human immunodeficiency virus for a conviction of a sexual offense, is amended to read as follows:

(b)(1)(A) A person arrested and charged with violating § 5-14-103, §

5-14-110, if the offense is a felony, §§ 5-14-124 – 5-14-127, § 5-26-202, or § 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 an 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 18. Arkansas Code § 16-90-1101(6)(B), concerning the definition of "sex offense" used in relation to the rights of crime victims, is amended to read as follows:

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

SECTION 19. Arkansas Code § 16-93-305(a), concerning probation for a first time offender, is amended to read as follows:

(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.

SECTION 20. Arkansas Code § 16-93-314(b)(2)(A), concerning the exceptions to the law authorizing 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., unless the offense was a misdemeanor violation of sexual indecency with a child, § 5-14-110; and

SECTION 21. Arkansas Code § 17-3-102(a)(16), concerning offenses that disqualify a person from receiving or holding a license issued by a licensing entity, is amended to read as follows:

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

if the offense is a felony;

SECTION 22. Arkansas Code § 17-14-203(12)(C)(i)(i), concerning factors that call into question an applicant's fitness for registration, licensure, or certification by the Arkansas Appraiser Licensing and Certification Board and the conviction of certain offenses within the previous five (5) years, 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 23. Arkansas Code § 18-16-112(a)(4)(A)(ii), concerning the definition of "sex crime" used in relation to 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 the offense is a felony;*

SECTION 24. Arkansas Code § 20-13-1106(a)(1)(O), concerning a disqualifying offense for certification or recertification by the Division of Emergency Medical Services, is amended to read as follows:

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

SECTION 25. Arkansas Code § 20-16-2402(9), concerning the definitions contained in the Every Mom Matters Act related to reproductive health, is amended to read as follows:

(9) "Sexual assault" means an act or offense described in § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110.

SECTION 26. 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 27. 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 individuals with a disability, is amended to read as follows:

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

SECTION 28. Arkansas Code § 21-15-103(g)(15), concerning offenses requiring discharge from employment with a state agency for certain positions, is amended to read as follows:

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

SECTION 29. Arkansas Code § 21-15-104(c)(8), concerning offenses for which a waiver of exclusion or discharge requirement for persons in designated positions is prohibited, is amended to read as follows:

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

SECTION 30. 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 the offense is a felony, 5-14-111 – 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 the offense is a felony, 5-14-111 – 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.

/s/J. Payton