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A Bill

SENATE BILL 552

By: Senator Hester
By: Representative Gonzales

For An Act To Be Entitled

AN ACT TO CREATE THE OFFENSE OF CAPITAL RAPE; AND FOR
OTHER PURPOSES.

Subtitle

TO CREATE THE OFFENSE OF CAPITAL RAPE.

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

SECTION 1. Arkansas Code Title 5, Chapter 14, Subchapter 1, is amended to add an additional section to read as follows:

5-14-114. Capital rape.

(a) A person commits capital rape if:

(1) By forcible compulsion, he or she engages in sexual intercourse or deviate sexual activity with another person who is younger than seventeen (17) years of age and causes or threatens to cause serious physical injury to the other person;

(2) He or she engages in sexual intercourse or deviate sexual activity with another person who is younger than fourteen (14) years of age and causes or threatens to cause serious physical injury to the other person;

(3) Acting alone or with one (1) or more other persons:

(A) The person commits or attempts to commit:

(i) Terrorism, § 5-54-205;

(ii) Kidnapping, § 5-11-102;

(iii) Vehicular piracy, § 5-11-105;

(iv) Robbery, § 5-12-102;

(v) Aggravated robbery, § 5-12-103;



(vi) Residential burglary, § 5-39-201(a);
(vii) Commercial burglary, § 5-39-201(b);
(viii) Aggravated residential burglary, § 5-39-204;
(ix) A felony violation of the Uniform Controlled
Substances Act, §§ 5-64-101 – 5-64-508, involving an actual delivery of a
controlled substance;
(x) First degree escape, § 5-54-110;
(xi) Trafficking of persons, § 5-18-103;
(xii) Engaging children in sexually explicit conduct
for use in visual or print medium, § 5-27-303; or
(xiii) Transportation of minors for prohibited
sexual conduct, § 5-27-305; and

(B) During the course of or in furtherance of the offense
under subdivision (a)(3)(A) of this section, the person or an accomplice
engages in sexual intercourse or deviate sexual activity with another person
who is younger than fourteen (14) years of age;

(4) The person enters into an agreement in which, in return for
anything of value, he or she engages in sexual intercourse or deviate sexual
activity with another person who is younger than fourteen (14) years of age;

(5) While using or threatening to use a deadly weapon, he or she
engages in sexual intercourse or deviate sexual activity with another person
who is younger than fourteen (14) years of age;

(6) He or she engages in sexual intercourse or deviate sexual
activity with another person who is younger than fourteen (14) years of age
after having been previously convicted of rape under § 5-14-103(a)(3) or
capital rape under this section; or

(7) He or she commits rape under § 5-10-103 or capital rape
under subdivisions (a)(1)-(5) of this section after having been previously
convicted of rape under § 5-14-103 or capital rape under this section.

(b)(1) Capital rape is punishable as follows:

(A) If the defendant was eighteen (18) years of age or
older at the time he or she committed the offense:

(i) Death; or

(ii) Life imprisonment without parole under §§ 5-4-
601 – 5-4-605, 5-4-607, and 5-4-608; or

(B) If the defendant was younger than eighteen (18) years

of age at the time he or she committed the offense, life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment.

(2) For any purpose other than disposition under §§ 5-4-101 – 5-4-104, 5-4-201 – 5-4-204, 5-4-301 – 5-4-307, 5-4-401 – 5-4-404, 5-4-501 – 5-4-504, 5-4-601 – 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-314, capital rape is a Class Y felony.

(3)(A) If the sentence prescribed in subdivision (b)(1)(A)(i) of this section for capital rape is held unconstitutional, the sentence for capital rape shall be equal to the sentence prescribed in subdivision (b)(1)(A)(ii) of this section.

(B) If subdivisions (b)(1)(A)(i) and (ii) of this section are held to be unconstitutional, capital rape shall be a Class Y felony with a minimum term of imprisonment of twenty-five (25) years.

(c) It is no defense to a prosecution for capital rape under subdivisions (a)(2)-(a)(6) of this section that the victim consented to the conduct.

(d)(1) A court may issue a permanent no contact order when:

(A) A defendant pleads guilty or nolo contendere to capital rape; or

(B) All of the defendant's appeals have been exhausted and the defendant remains convicted of capital rape.

(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(e) A person convicted of capital rape is subject to § 9-10-121.

SECTION 2. Arkansas Code Title 16, Chapter 93, Subchapter 6, is amended to add an additional section to read as follows:

16-93-623. Parole eligibility – Capital rape.

(a) Unless the person was a minor at the time of the offense, a person sentenced for capital rape, § 5-14-114, on or after the effective date of this act is not eligible for parole.

(b)(1) If the person who committed capital rape, § 5-14-114, was a minor at the time of the offense, the person is eligible for release on

parole no later than after thirty (30) years of incarceration, including any applicable sentencing enhancements, and including an instance in which multiple sentences are to be served consecutively or concurrently, unless by law the minor is eligible for earlier parole eligibility.

(2) Credit for meritorious good time shall not be applied to calculations of time served under this subsection for minors convicted and sentenced for capital rape, § 5-14-114.

(3) The calculation of the time periods under this subsection shall include any applicable sentence enhancements to which the minor was sentenced that accompany the sentence for capital rape, § 5-14-114.

(c)(1) The Parole Board shall ensure that a hearing to consider the parole eligibility of a person who was a minor at the time he or she committed capital rape, § 5-14-114, takes into account how a minor offender is different from an adult offender and provides a person who was a minor at the time he or she committed capital rape, § 5-14-114, with a meaningful opportunity to be released on parole based on demonstrated maturity and rehabilitation.

(2) During a parole eligibility hearing involving a person who was a minor at the time he or she committed capital rape, § 5-14-114, the board shall take into consideration in addition to other factors required by law to be considered by the board:

(A) The diminished culpability of minors as compared to that of adults;

(B) The hallmark features of youth;

(C) Subsequent growth and increased maturity of the person during incarceration;

(D) Age of the person at the time of the capital rape, § 5-14-114;

(E) Immaturity of the person at the time of the capital rape, § 5-14-114;

(F) The extent of the person's role in the capital rape, § 5-14-114, and whether and to what extent an adult was involved in the capital rape, § 5-14-114;

(G) The person's family and community circumstances at the time of the capital rape, § 5-14-114, including any history of abuse, trauma, and involvement in the child welfare system;

(H) The person's participation in available rehabilitative and educational programs while in prison, if those programs have been made available, or use of self-study for self-improvement;

(I) The results of comprehensive mental health evaluations conducted by an adolescent mental health professional licensed in the state at the time of sentencing and at the time the person becomes eligible for parole under this section; and

(J) Other factors the board deems relevant.

(3) A person eligible for parole under this section may have an attorney present to represent him or her at the parole eligibility hearing.

(d)(1)(A) The board shall notify a victim of the capital rape, § 5-14-114, before the board reviews parole eligibility under this section for an inmate convicted of the capital rape, § 5-14-114, and provide information regarding victim input meetings, as well as state and national victim resource information.

(B) If the victim is incapacitated or deceased, the notice under subdivision (d)(1)(A) of this section shall be given to the victim's family.

(C) If the victim is less than eighteen (18) years of age, the notice under subdivision (d)(1)(A) of this section shall be given to the victim's parent or guardian.

(2) Victim notification under this subsection shall include:

(A) The location, date, and time of parole review; and

(B) The name and phone number of the individual to contact for additional information.

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

(a)(1) A prosecution for the following offenses may be commenced at any time:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) Rape, § 5-14-103, if the victim was a minor at the time of the offense;

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

- (F) Capital rape, § 5-14-114;
- ~~(F)~~(G) Sexual assault in the first degree, § 5-14-124;
- ~~(G)~~(H) Sexual assault in the second degree, § 5-14-125, if the victim was a minor at the time of the offense;
- ~~(H)~~(I) Incest, § 5-26-202, if the victim was a minor at the time of the offense;
- ~~(I)~~(J) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- ~~(J)~~(K) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- ~~(K)~~(L) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- ~~(L)~~(M) Producing, directing, or promoting a sexual performance by a child, § 5-27-403; and
- ~~(M)~~(N) Computer exploitation of a child in the first degree, § 5-27-605.

SECTION 4. Arkansas Code § 5-1-110(d)(1), concerning prosecution of conduct constituting more than one (1) offense, is amended to read as follows:

(d)(1) Notwithstanding any provision of law to the contrary, a separate conviction and sentence are authorized for:

- (A) Capital murder, § 5-10-101, and any felony utilized as an underlying felony for the capital murder;
- (B) Criminal attempt to commit capital murder, §§ 5-3-201 and 5-10-101, and any felony utilized as an underlying felony for the attempted capital murder;
- (C) Murder in the first degree, § 5-10-102, and any felony utilized as an underlying felony for the murder in the first degree;
- (D) Criminal attempt to commit murder in the first degree, §§ 5-3-201 and 5-10-102, and any felony utilized as an underlying felony for the attempted murder in the first degree; ~~and~~
- (E) Continuing criminal enterprise, § 5-64-405, and any predicate felony utilized to prove the continuing criminal enterprise; and
- (F) Capital rape, § 5-14-114, and any felony utilized as an underlying felony for the capital rape.

SECTION 5. Arkansas Code § 5-3-203(2), concerning the classification of attempt offenses, is amended to read as follows:

(2) Class A felony if the offense attempted is treason, § 5-51-201, capital rape, § 5-14-114, or a Class Y felony other than capital murder, § 5-10-101;

SECTION 6. Arkansas Code § 5-3-301(b)(1), concerning the inchoate offense of solicitation, is amended to read as follows:

(1) Class A felony if the offense solicited is ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201, capital rape, § 5-14-114, or a Class Y felony;

SECTION 7. Arkansas Code § 5-3-404 is amended to read as follows:

5-3-404. Classification.

Criminal conspiracy is a:

(1) Class A felony if an object of the conspiracy is commission of ~~capital murder, treason~~ capital murder, § 5-10-101, treason, § 5-51-201, capital rape, § 5-14-114, or a Class Y felony;

(2) Class B felony if an object of the conspiracy is commission of a Class A felony;

(3) Class C felony if an object of the conspiracy is commission of a Class B felony;

(4) Class D felony if an object of the conspiracy is commission of a Class C felony;

(5) Class A misdemeanor if an object of the conspiracy is commission of a Class D felony or an unclassified felony;

(6) Class B misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor; or

(7) Class C misdemeanor if an object of the conspiracy is commission of a Class B misdemeanor.

SECTION 8. Arkansas Code § 5-4-104(b), concerning authorized sentences, is amended to read as follows:

(b) A defendant convicted of capital murder, § 5-10-101, capital rape, § 5-14-114, or treason, § 5-51-201, shall be sentenced to death or life

imprisonment without parole in accordance with §§ 5-4-601 – 5-4-605, 5-4-607, and 5-4-608, except if the defendant was younger than eighteen (18) years of age at the time he or she committed the capital murder, § 5-10-101, capital rape, § 5-14-114, or treason, § 5-51-201, he or she shall be sentenced to life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment.

SECTION 9. Arkansas Code § 5-4-104(d) and (e), concerning authorized sentences, are amended to read as follows:

(d) A defendant convicted of an offense other than a Class Y felony, capital murder, § 5-10-101, capital rape, § 5-14-114, treason, § 5-51-201, or murder in the second degree, § 5-10-103, may be sentenced to any one (1) or more of the following, except as precluded by subsection (e) of this section:

- (1) Imprisonment as authorized by §§ 5-4-401 – 5-4-404;
- (2) Probation as authorized by §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314;
- (3) Payment of a fine as authorized by §§ 5-4-201 and 5-4-202;
- (4) Restitution as authorized by a provision of § 5-4-205; or
- (5) Imprisonment and payment of a fine.

(e)(1)(A) The court shall not suspend imposition of sentence as to a term of imprisonment nor place the defendant on probation for the following offenses:

- (i) Capital murder, § 5-10-101;
- (ii) Capital rape, § 5-14-114;
- ~~(iii)~~ Treason, § 5-51-201;
- ~~(iii)-(iv)~~ A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section;
- ~~(iv)-(v)~~ Driving or boating while intoxicated, § 5-65-103;
- ~~(v)-(vi)~~ Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in subsection (c) of this section; or
- ~~(vi)-(vii)~~ Engaging in a continuing criminal enterprise, § 5-64-405.

(B)(i) In any other case, the court may suspend imposition

of sentence or place the defendant on probation, in accordance with §§ 5-4-301 – 5-4-307 and 16-93-306 – 16-93-314, except as otherwise specifically prohibited by statute.

(ii) The court may not suspend execution of sentence.

(2) If the offense is punishable by fine and imprisonment, the court may sentence the defendant to pay a fine and suspend imposition of the sentence as to imprisonment or place the defendant on probation.

(3)(A) The court may sentence the defendant to a term of imprisonment and suspend imposition of sentence as to an additional term of imprisonment.

(B) However, the court shall not sentence a defendant to imprisonment and place him or her on probation, except as authorized by § 5-4-304.

SECTION 10. Arkansas Code § 5-4-106(b), concerning an extended no contact order, is amended to read as follows:

(b) At the request of the prosecuting attorney, a court shall determine whether to issue an extended post-conviction no contact order to a person convicted of one (1) or more of the following offenses:

- (1) Capital murder, § 5-10-101, or attempted capital murder;
- (2) Murder in the first degree, § 5-10-102, or attempted murder in the first degree;
- (3) Murder in the second degree, § 5-10-103, or attempted murder in the second degree;
- (4) Kidnapping, § 5-11-102;
- (5) Battery in the first degree, § 5-13-201;
- (6) Battery in the second degree, § 5-13-202;
- (7) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (8) Sexual assault in the first degree, § 5-14-124;
- (9) Domestic battering in the first degree, § 5-26-303;
- (10) Domestic battering in the second degree, § 5-26-304; or
- (11) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

SECTION 11. Arkansas Code § 5-4-301(a)(1), concerning offenses for

which suspension or probation is prohibited, is amended to read as follows:

(a)(1) A court shall not suspend imposition of sentence as to a term of imprisonment or place a defendant on probation for the following offenses:

(A) Capital murder, § 5-10-101;

(B) Treason, § 5-51-201;

(C) Capital rape, § 5-14-114;

~~(G)~~(D) A Class Y felony, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c);

~~(D)~~(E) Driving or boating while intoxicated, § 5-65-103;

~~(E)~~(F) Murder in the second degree, § 5-10-103, except to the extent suspension of an additional term of imprisonment is permitted in § 5-4-104(c); or

~~(F)~~(G) Engaging in a continuing criminal enterprise, § 5-64-405.

SECTION 12. Arkansas Code § 5-4-501(c)(2), concerning habitual offenders and what offenses are considered serious felonies involving violence, is amended to read as follows:

(2) As used in this subsection, “serious felony involving violence” means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102, involving an activity making it a Class Y felony;

(iv) Aggravated robbery, § 5-12-103;

(v) Terroristic act, § 5-13-310, involving an activity making it a Class Y felony;

(vi) Rape, § 5-14-103, or capital rape, § 5-14-114;

(vii) Sexual assault in the first degree, § 5-14-124;

(viii) Causing a catastrophe, § 5-38-202(a);

(ix) Aggravated residential burglary, § 5-39-204; or

(x) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable serious felony involving violence from another jurisdiction.

SECTION 13. Arkansas Code § 5-4-501(d)(2)(A), concerning habitual offenders and what rape offenses are considered felonies involving violence, is amended to read as follows:

(A) Any of the following felonies:

- (i) Murder in the first degree, § 5-10-102;
- (ii) Murder in the second degree, § 5-10-103;
- (iii) Kidnapping, § 5-11-102;
- (iv) Aggravated robbery, § 5-12-103;
- (v) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (vi) Battery in the first degree, § 5-13-201;
- (vii) Terroristic act, § 5-13-310;
- (viii) Sexual assault in the first degree, § 5-14-124;
- (ix) Sexual assault in the second degree, § 5-14-125;
- (x) Domestic battering in the first degree, § 5-26-303;
- (xi) Residential burglary, § 5-39-201(a);
- (xii) Aggravated residential burglary, § 5-39-204;
- (xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(xiv) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;

(xv) A felony attempt, solicitation, or conspiracy to commit:

- (a) Capital murder, § 5-10-101;
- (b) Murder in the first degree, § 5-10-102;
- (c) Murder in the second degree, § 5-10-103;
- (d) Kidnapping, § 5-11-102;
- (e) Aggravated robbery, § 5-12-103;
- (f) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
- (g) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (h) Battery in the first degree, § 5-13-201;
- (i) Domestic battering in the first degree, § 5-26-

303;

(j) Residential burglary, § 5-39-201(a); or

(k) Aggravated residential burglary, § 5-39-204; or

(xvi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

SECTION 14. Arkansas Code § 5-4-601, concerning the legislative intent of the trial and sentencing procedures for capital offenses, is amended to read as follows:

(a) In enacting this subchapter, it is the intent of the General Assembly to specify the procedures and standards pursuant to which a sentencing body shall conform in making a determination as to whether a sentence of death is to be imposed upon a conviction ~~of capital murder~~ for capital murder, § 5-10-101, or capital rape, § 5-14-114.

(b) If the provisions of this subchapter respecting sentencing procedures are held invalid with regard to the imposition of a sentence of death or a sentence of death is declared to be invalid per se, it is the intent of the General Assembly that+

~~(1) Capital murder is~~ capital murder, § 5-10-101, and capital rape, § 5-14-114, are punishable by life imprisonment without parole; ~~and~~

~~(2) The procedures and findings required by §§ 5-4-602—5-4-605, 5-4-607, and 5-4-608 are deemed repealed and of no effect.~~

SECTION 15. Arkansas Code § 5-4-604 is amended to read as follows:
5-4-604. Aggravating circumstances.

An aggravating circumstance is limited to the following:

(1) The capital ~~murder~~ offense was committed by a person imprisoned as a result of a felony conviction;

(2) The capital ~~murder~~ offense was committed by a person unlawfully at liberty after being sentenced to imprisonment as a result of a felony conviction;

(3) The person previously committed another felony, an element of which was the use or threat of violence to another person or the creation of a substantial risk of death or serious physical injury to another person;

(4) The person in the commission of the capital ~~murder~~ offense knowingly created a great risk of death to a person other than the victim or

caused the death of more than one (1) person in the same criminal episode;

(5) The capital ~~murder~~ offense was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody;

(6) The capital ~~murder~~ offense was committed for pecuniary gain;

(7) The capital ~~murder~~ offense was committed for the purpose of disrupting or hindering the lawful exercise of any government or political function;

(8)(A) The capital ~~murder~~ offense was committed in an especially cruel or depraved manner.

(B)(i) For purposes of subdivision (8)(A) of this section, a capital murder is committed in an especially cruel manner when, as part of a course of conduct intended to inflict mental anguish, serious physical abuse, or torture upon the victim prior to the victim's death, mental anguish, serious physical abuse, or torture is inflicted.

(ii)(a) "Mental anguish" means the victim's uncertainty as to his or her ultimate fate.

(b) "Serious physical abuse" means physical abuse that creates a substantial risk of death or that causes protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ.

(c) "Torture" means the infliction of extreme physical pain for a prolonged period of time prior to the victim's death.

(C) For purposes of subdivision (8)(A) of this section, a capital ~~murder~~ offense is committed in an especially depraved manner when the person relishes the ~~murder~~ offense, evidencing debasement or perversion, or shows an indifference to the suffering of the victim and evidences a sense of pleasure in committing the ~~murder~~ offense;

(9) The capital ~~murder~~ offense was committed by means of a destructive device, bomb, explosive, or similar device that the person planted, hid, or concealed in any place, area, dwelling, building, or structure, or mailed or delivered, or caused to be planted, hidden, concealed, mailed, or delivered, and the person knew that his or her act would create a great risk of death to human life; or

(10) The capital ~~murder~~ offense was committed against a person whom the defendant knew or reasonably should have known was especially vulnerable to the attack because:

(A) Of either a temporary or permanent severe physical or mental disability which would interfere with the victim's ability to flee or to defend himself or herself; or

(B) The person was twelve (12) years of age or younger.

SECTION 16. Arkansas Code § 5-4-605 is amended to read as follows:

5-4-605. Mitigating circumstances.

A mitigating circumstance includes, ~~but is not limited to,~~ without limitation the following:

(1) The capital ~~murder~~ offense was committed while the defendant was under extreme mental or emotional disturbance;

(2) The capital ~~murder~~ offense was committed while the defendant was acting under an unusual pressure or influence or under the domination of another person;

(3) The capital ~~murder~~ offense was committed while the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental disease or defect, intoxication, or drug abuse;

(4) The youth of the defendant at the time of the commission of the capital ~~murder~~ offense;

(5) The capital ~~murder~~ offense was committed by another person and the defendant was an accomplice and his or her participation was relatively minor; or

(6) The defendant has no significant history of prior criminal activity.

SECTION 17. Arkansas Code § 5-4-607 is amended to read as follows:

5-4-607. Application for executive clemency – Regulations.

(a) The pardon of a person convicted of capital murder, § 5-10-101, capital rape, § 5-14-114, or of a Class Y felony, Class A felony, or Class B felony, or the commutation of a sentence of a person convicted of capital murder, § 5-10-101, or capital rape, § 5-14-114, or of a Class Y felony, Class A felony, or Class B felony, may be granted only in the manner provided in this section.

(b)(1) A copy of the application for pardon or commutation shall be filed with:

(A) The Secretary of State;
(B) The Attorney General;
(C) The sheriff of the county where the offense was committed;

(D) The prosecuting attorney of the judicial district where the applicant was found guilty and sentenced, if still in office, and, if not, the successor of that prosecuting attorney;

(E) The circuit judge presiding over the proceedings at which the applicant was found guilty and sentenced, if still in office, and, if not, the successor of that circuit judge; and

(F) The victim of the crime or the victim's next of kin, if he or she files a request for notice with the prosecuting attorney.

(2)(A) The application shall set forth a ground upon which the pardon or commutation is sought.

(B) If the application involves a conviction for capital murder, § 5-10-101, or capital rape, § 5-14-114, a notice of the application shall be published by two (2) insertions, separated by a minimum of seven (7) days, in a newspaper of general circulation in the county or counties where the offense or offenses of the applicant were committed.

(c) On granting an application for pardon or commutation, the Governor shall:

(1) Include in his or her written order the reason for the granting of the application; and

(2) File with the House of Representatives and the Senate a copy of his or her written order which shall state the:

(A) Applicant's name;
(B) Offense of which the applicant was convicted and the sentence imposed;

(C) Date of the judgment imposing the sentence; and

(D) Effective date of the pardon or commutation.

(d) A person sentenced to death or to life imprisonment without parole is not eligible for parole and shall not be paroled.

(e) If the sentence of a person sentenced to death or life imprisonment without parole is commuted by the Governor to a term of years, the person shall not be paroled, nor shall the length of his or her incarceration be reduced in any way to less than the full term of years

specified in the order of commutation or in any subsequent order of commutation.

(f) A reprieve may be granted as presently provided by law.

SECTION 18. Arkansas Code § 5-4-608 is amended to read as follows:

5-4-608. Waiver of death penalty.

(a) If a defendant is charged with a capital ~~murder~~ offense, with the permission of the court the prosecuting attorney may waive the death penalty.

(b) In a case described in subsection (a) of this section, if the defendant pleads guilty to the capital ~~murder~~ offense or is found guilty of a capital ~~murder~~ offense after trial to the court or to a jury, the trial court shall sentence the defendant to life imprisonment without parole.

SECTION 19. Arkansas Code § 5-4-618 is amended to read as follows:

5-4-618. Defendants with intellectual disabilities.

(a)(1) As used in this section, "intellectual disabilities" means:

(A) Significantly below-average general intellectual functioning accompanied by a significant deficit or impairment in adaptive functioning manifest in the developmental period, but no later than age eighteen (18) years of age; and

(B) A deficit in adaptive behavior.

(2) There is a rebuttable presumption of intellectual disabilities when a defendant has an intelligence quotient of sixty-five (65) or below.

(b) No defendant with intellectual disabilities at the time of committing capital murder, § 5-10-101, or capital rape, § 5-14-114, shall be sentenced to death.

(c) The defendant has the burden of proving intellectual disabilities at the time of committing the offense by a preponderance of the evidence.

(d)(1) A defendant on trial for capital murder, § 5-10-101, or capital rape, § 5-14-114, shall raise the special sentencing provision of intellectual disabilities by motion prior to trial.

(2)(A) Prior to trial, the court shall determine if the defendant has an intellectual disability.

(B)(i) If the court determines that the defendant does not have an intellectual disability, the defendant may raise the question of an

intellectual disability to the jury for determination de novo during the sentencing phase of the trial.

(ii) At the time the jury retires to decide mitigating and aggravating circumstances, the jury shall be given a special verdict form on an intellectual disability.

(iii) If the jury unanimously determines that the defendant had an intellectual disability at the time of the commission of capital murder, § 5-10-101, or capital rape, § 5-14-114, then the defendant will automatically be sentenced to life imprisonment without possibility of parole.

(C) If the court determines that the defendant has an intellectual disability, then:

(i) The jury is not “death qualified”; and

(ii) The jury shall sentence the defendant to life imprisonment without possibility of parole upon conviction.

(e) However, this section is not deemed to:

(1) Require unanimity for consideration of any mitigating circumstance; or

(2) Supersede any suggested mitigating circumstance regarding mental defect or disease currently found in § 5-4-605.

SECTION 20. Arkansas Code § 5-4-702(a), concerning a sentence enhancement for offenses committed in the presence of a child, is amended to read as follows:

(a) A person who commits any of the following offenses may be subject to an enhanced sentence of an additional term of imprisonment of not less than one (1) year and not greater than ten (10) years if the offense is committed in the presence of a child:

(1) Capital murder, § 5-10-101;

(2) Murder in the first degree, § 5-10-102;

(3) Murder in the second degree, § 5-10-103;

(4) Aggravated robbery, § 5-12-103;

(5) A felony offense of assault or battery under § 5-13-201 et seq.;

(6) Rape, § 5-14-103, or capital rape, § 5-14-114;

(7) Sexual assault in the second degree, § 5-14-125; or

(8) A felony offense of domestic battering or assault on a family or household member under §§ 5-26-303 – 5-26-309.

SECTION 21. Arkansas Code § 5-10-101(a)(1)(A), concerning capital murder committed while committing certain felony offenses, is amended to read as follows:

- (A) The person commits or attempts to commit:
- (i) Terrorism, as defined in § 5-54-205;
 - (ii) Rape, § 5-14-103, or capital rape, § 5-14-114;
 - (iii) Kidnapping, § 5-11-102;
 - (iv) Vehicular piracy, § 5-11-105;
 - (v) Robbery, § 5-12-102;
 - (vi) Aggravated robbery, § 5-12-103;
 - (vii) Residential burglary, § 5-39-201(a);
 - (viii) Commercial burglary, § 5-39-201(b);
 - (ix) Aggravated residential burglary, § 5-39-204;
 - (x) A felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 – 5-64-508, involving an actual delivery of a controlled substance; or
 - (xi) First degree escape, § 5-54-110; and

SECTION 22. Arkansas Code § 5-14-103 is amended to read as follows:
5-14-103. Rape.

(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person:

- (1) By forcible compulsion;
- (2) Who is incapable of consent because he or she is:
 - (A) Physically helpless;
 - (B) Mentally defective; or
 - (C) Mentally incapacitated;
- (3)(A) Who is less than fourteen (14) years of age.
 - (B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or
- (4)(A) Who is a minor and the actor is the victim's:
 - (i) Guardian;

(ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;

(iii) Brother or sister of the whole or half blood or by adoption; or

(iv) Nephew, niece, or first cousin.

(B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under subdivision (a)(3) or subdivision (a)(4) of this section that the victim consented to the conduct.

(c)(1) Rape is a Class Y felony.

(2) Except as provided under § 5-4-104(c)(2), a person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age under this section shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.

(d)(1) A court may issue a permanent no contact order when:

(A) A defendant pleads guilty or nolo contendere; or

(B) All of the defendant's appeals have been exhausted and the defendant remains convicted.

(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(e) A person convicted of rape is subject to § 9-10-121.

(f) The offense of rape under subdivision (a)(3) of this section is a lesser included offense to capital rape, § 5-14-114.

SECTION 23. Arkansas Code § 5-54-105(b)(2), concerning the offense of hindering apprehension or prosecution, is amended to read as follows:

(2) Subdivision (b)(1)(B) of this section does not apply if the offense of the person assisted is:

(A) Capital murder, as prohibited in § 5-10-101;

(B) Murder in the first degree, as prohibited in § 5-10-102;

(C) Kidnapping, as prohibited in § 5-11-102; ~~or~~

(D) Rape, as prohibited in § 5-14-103; or

(E) Capital rape, § 5-14-114.

SECTION 24. Arkansas Code § 5-73-202(1), concerning the definitions to be used under the Uniform Machine Gun Act, is amended to read as follows:

(1) "Crime of violence" means any of the following crimes or an attempt to commit any of them:

- (A) Murder;
- (B) Manslaughter;
- (C) Kidnapping;
- (D) Rape;
- (E) Mayhem;
- (F) Assault to do great bodily harm;
- (G) Robbery;
- (H) Burglary;
- (I) Housebreaking;
- (J) Breaking and entering; ~~and~~
- (K) Larceny; and
- (L) Capital rape, § 5-14-114;

SECTION 25. Arkansas Code § 6-17-410(c)(8), concerning teacher licensure and which offenses are disqualifying for licensure if there is a true report in the Child Maltreatment Central Registry or who has been found guilty of the offense, is amended to read as follows:

(8) Rape as prohibited in § 5-14-103 or capital rape as prohibited in § 5-14-114;

SECTION 26. Arkansas Code § 6-17-414(b)(8), concerning teacher licensure and which offenses are disqualifying for licensure if there is a true report in the Child Maltreatment Central Registry or who has been found guilty of the offense, is amended to read as follows:

(8) Rape as prohibited in § 5-14-103 or capital rape as prohibited in § 5-14-114;

SECTION 27. Arkansas Code § 9-10-121(a), concerning termination of parental rights of putative fathers convicted of a rape, is amended to read as follows:

(a) All rights of a putative father to custody, visitation, or other contact with a child conceived as a result of a rape shall be terminated immediately upon conviction of the rape in which the child was conceived under § 5-14-103 or § 5-14-114.

SECTION 28. Arkansas Code § 9-27-318(b)(1)(K), concerning the filing of felony offenses committed by a juvenile into circuit court, is amended to read as follows:

(K) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:

- (i) Capital murder, § 5-10-101;
- (ii) Murder in the first degree, § 5-10-102;
- (iii) Murder in the second degree, § 5-10-103;
- (iv) Kidnapping, § 5-11-102;
- (v) Aggravated robbery, § 5-12-103;
- (vi) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (vii) Battery in the first degree, § 5-13-201;
- (viii) First degree escape, § 5-54-110; and
- (ix) Second degree escape, § 5-54-111;

SECTION 29. Arkansas Code § 9-27-318(c), concerning the filing of felony offenses committed by a juvenile into circuit court, is amended to read as follows:

(c) A prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile:

(1) At least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony; or

(2) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that, if committed by an adult, would be:

- (A) Capital murder, § 5-10-101;
- (B) Murder in the first degree, § 5-10-102;
- (C) Kidnapping, § 5-11-102;
- (D) Aggravated robbery, § 5-12-103;
- (E) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (F) Battery in the first degree, § 5-13-201; or

(G) Terroristic act, § 5-13-310.

SECTION 30. Arkansas Code § 9-27-356(a), concerning juvenile sex offender assessment and registration, is amended to read as follows:

(a) If a juvenile is an adjudicated delinquent for any of the following offenses, the court shall order a sex offender screening and risk assessment:

- (1) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (2) Sexual assault in the first degree, § 5-14-124;
- (3) Sexual assault in the second degree, § 5-14-125;
- (4) Incest, § 5-26-202; or
- (5) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303.

SECTION 31. Arkansas Code § 9-27-357(a), concerning delinquent persons who are required to submit a deoxyribonucleic acid sample, is amended to read as follows:

(a) A person who is adjudicated delinquent for the following offenses shall have a deoxyribonucleic acid sample drawn:

- (1) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (2) Sexual assault in the first degree, § 5-14-124;
- (3) Sexual assault in the second degree, § 5-14-125;
- (4) Incest, § 5-26-202;
- (5) Capital murder, § 5-10-101;
- (6) Murder in the first degree, § 5-10-102;
- (7) Murder in the second degree, § 5-10-103;
- (8) Kidnapping, § 5-11-102;
- (9) Aggravated robbery, § 5-12-103;
- (10) Terroristic act, § 5-13-310; and
- (11) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

SECTION 32. Arkansas Code § 9-28-409(e)(2), concerning disqualifying offenses for a person who undergoes a criminal record and background check under the Child Welfare Agency Licensing Act, is amended to read as follows:

- (2) A person who is required to have a criminal records check

under subdivision (b)(1) or subdivision (c)(1) of this section shall be absolutely and permanently prohibited from having direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

- (A) Abuse of an endangered or impaired person, if felony, § 5-28-103;
- (B) Arson, § 5-38-301;
- (C) Capital murder, § 5-10-101;
- (D) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
- (E) Kidnapping, § 5-11-102;
- (F) Murder in the first degree, § 5-10-102;
- (G) Murder in the second degree, § 5-10-103;
- (H) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (I) Sexual assault in the first degree, § 5-14-124;
- (J) Sexual assault in the second degree, § 5-14-125;
- (K) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and
- (L) Trafficking of persons, § 5-18-103.

SECTION 33. Arkansas Code § 11-5-115(a)(1), concerning the offenses that may be grounds for a civil action concerning workplace violence and working conditions, is amended to read as follows:

(1) Suffered unlawful violence by an individual as defined by § 5-13-310, terroristic act; § 5-14-103, rape; § 5-14-114, capital rape; §§ 5-13-201 – 5-13-203, battery; §§ 5-26-301 – 5-26-309, domestic battering and assault on a family or household member; or a crime of violence as defined by § 5-73-202(1);

SECTION 34. Arkansas Code § 12-12-104(f)(2)(A), concerning the offense of rape and its inclusion in the definition of "sex offense", is amended to read as follows:

- (A) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 35. Arkansas Code § 12-12-903(13)(A)(i)(a), concerning the offense of rape and its inclusion in the definition of "sex offense" for purposes of the requirement to retain physical evidence in certain prosecutions under the Sex Offender Registration Act of 1997, is amended to read as follows:

(a) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 36. Arkansas Code § 12-12-919(a), concerning lifetime registration for a sex offender, is amended to read as follows:

- (a) Lifetime registration is required for a sex offender who:
- (1) Was found to have committed an aggravated sex offense;
 - (2) Was determined by the court to be or assessed as a Level 4 sexually dangerous person;
 - (3) Has pleaded guilty or nolo contendere to or been found guilty of a second or subsequent sex offense under a separate case number, not multiple counts on the same charge;
 - (4) Was convicted of rape by forcible compulsion, § 5-14-103(a)(1), capital rape, § 5-14-114, or other substantially similar offense in another jurisdiction; or
 - (5) Has pleaded guilty or nolo contendere to or been found guilty of failing to comply with registration and reporting requirements under § 12-12-904 three (3) or more times.

SECTION 37. Arkansas Code § 12-29-102(4), concerning offenses for which an inmate will be denied participation in a furlough program, is amended to read as follows:

(4) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 38. Arkansas Code § 12-30-404(a)(3), concerning the offenses for which an inmate will be denied participation in a work study release program, is amended to read as follows:

(3) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 39. Arkansas Code § 13-4-409(c)(1)(D), concerning which items

relating to criminal investigations should be retained by a sheriff's office for ninety-nine years, is amended to read as follows:

(D) Rape, § 5-14-103, and capital rape, § 5-14-114;

SECTION 40. Arkansas Code § 16-33-305 is amended to read as follows:

16-33-305. Challenge to trial jurors – Individual juror – Peremptory.

(a) The state shall be entitled to ten (10) peremptory challenges in prosecutions for capital murder, § 5-10-101, or capital rape, § 5-14-114, to six (6) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors.

(b) The defendant shall be entitled to twelve (12) peremptory challenges in prosecutions for capital murder, § 5-10-101, or capital rape, § 5-14-114, to eight (8) peremptory challenges in prosecutions for all other felonies, and to three (3) peremptory challenges in prosecutions for misdemeanors.

SECTION 41. Arkansas Code § 16-42-103(d), concerning the definition of "sexual assault" as it pertains to admissibility of evidence of similar crimes in sexual assault cases, is amended to read as follows:

(d) For purposes of this section, the term "sexual assault" includes the following offenses:

- (1) Rape, § 5-14-103;
- (2) Capital rape, § 5-14-114;
- (3) Sexual assault in the first degree, § 5-14-124; and
- ~~(3)~~(4) Sexual assault in the second degree, § 5-14-125.

SECTION 42. Arkansas Code § 16-87-205(c)(1), concerning the Capital, Conflicts, and Appellate Office, is amended to read as follows:

(c)(1)~~(A)(i)~~ The Arkansas Public Defender Commission shall be appointed by the trial court in ~~the following situation:~~

~~(A)(i)~~ In a case involving capital murder cases, § 5-10-101, or capital rape, § 5-14-114, in which the death penalty is sought if a conflict of interest is determined by the court to exist between the trial public defender's office and the indigent person or if for any other reason the court determines that the trial public defender cannot or should not represent the indigent person.

(ii) The representation may be in conjunction with appointed private attorneys.

~~(iii)~~(B) In a case involving capital murder cases, § 5-10-101, or capital rape, § 5-14-114, unless the prosecuting attorney informs the circuit court at the arraignment of the defendant that the death penalty will not be sought, it shall be presumed for purposes of this section that the death penalty will be sought.

~~(iv)(a)~~(C)(i) The executive director may assign the Capital, Conflicts, and Appellate Office, a trial public defender from another area, a private attorney whose name appears on a list of attorneys maintained by the commission, or a combination of private and public defender attorneys to represent the indigent person.

~~(b)~~(ii) The executive director shall notify the trial court of the assignment, and an order reflecting the assignment shall be entered.

SECTION 43. Arkansas Code § 16-87-212(c), concerning court fees and expenses, is amended to read as follows:

(c) At the discretion of the commission, expenses in a case involving capital murder cases, § 5-10-101, or capital rape, § 5-14-114, and all proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

SECTION 44. Arkansas Code § 16-87-218(c)(1) and (2), concerning the costs for legal services provided by the Arkansas Public Defender Commission, are amended to read as follows:

(1) Capital murder, § 5-10-101, or capital rape, § 5-14-114, in which the death penalty was given, including any appeal and post-conviction remedy, twelve thousand five hundred dollars (\$12,500);

(2) Capital murder, § 5-10-101, or capital rape, § 5-14-114, in which the death penalty was not given, murder in the first degree, § 5-10-102, or Class Y felony:

(A) For an early disposition, five hundred dollars (\$500);

(B) For a negotiated plea or disposition before trial, two thousand five hundred dollars (\$2,500); or

(C) For a trial or an extended matter, seven thousand five

hundred dollars (\$7,500);

SECTION 45. Arkansas Code § 16-90-120(e)(1)(A)(iv), concerning the inclusion of the offense of rape as a seventy-percent offense as it pertains to the felony with a firearm sentence enhancement, is amended to read as follows:

(iv) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 46. Arkansas Code § 16-90-803(b)(2)(C)(iii)(a), concerning the calculation of prior offenses as it pertains to the voluntary presumptive standards under the sentencing guidelines, is amended to read as follows:

(a) Each adjudication is worth one-quarter (0.25) point, except for offenses adjudicated as delinquent which if committed by an adult are worth one (1) point and would have constituted:

- (1) Capital murder, § 5-10-101;
- (2) Murder in the first degree, § 5-10-102;
- (3) Murder in the second degree, § 5-10-103;
- (4) Kidnapping ~~in the first degree~~, § 5-11-102;
- (5) Aggravated robbery, § 5-12-103;
- (6) Rape, § 5-14-103, or capital rape, § 5-14-114;
- (7) Battery in the first degree, § 5-13-201; or
- (8) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

SECTION 47. Arkansas Code § 16-90-803(b)(5), concerning voluntary presumptive standards in sentencing, is amended to read as follows:

(5) Capital murder ~~is~~, § 5-10-101, and capital rape, § 5-14-114, are excluded from the sentencing standards and ~~is~~ are subject to the procedures in § 5-4-601 et seq.

SECTION 48. Arkansas Code § 16-91-110(b)(2), concerning bail bonds, are amended to read as follows:

(2) When a criminal defendant has been found guilty of or pleaded guilty or nolo contendere to a criminal offense of capital murder, § 5-10-101, or capital rape, § 5-14-114, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

SECTION 49. Arkansas Code § 16-91-202(e)(2)(A), concerning the qualifications of defense counsel in a capital case, is amended to read as follows:

(2)(A) In all such cases, the attorney shall have been admitted to practice law for not less than five (5) years and shall have had no fewer than three (3) years' experience in the actual handling of capital murder or other capital case prosecutions or capital murder or other capital case post-conviction proceedings in Arkansas courts.

SECTION 50. Arkansas Code § 16-93-204(d)(2)(A), concerning executive clemency, is amended to read as follows:

(2)(A) Before considering an application for a pardon or recommending a commutation of sentence of a person who was convicted of capital murder, § 5-10-101, capital rape, § 5-14-114, or a Class Y felony, Class A felony, or Class B felony, the board shall notify the victim of the crime or the victim's next of kin, if he or she files a request for notice with the prosecuting attorney.

SECTION 51. Arkansas Code § 16-93-207(d)(1)(B), concerning applications for pardon, commutation of sentence, and remission of fines and forfeitures, is amended to read as follows:

(B) Eight (8) years from the date of the denial if the applicant is serving a sentence of life without parole for capital murder, § 5-10-101, or capital rape, § 5-14-114.

SECTION 52. Arkansas Code § 16-93-612(e), concerning the date of an offense and which parole eligibility statute will govern, is amended to add an additional subdivision to read as follows:

(5) If the felony is capital rape, § 5-14-114, and the offense

occurred on or after the effective date of this act, § 16-93-623 governs the person's parole eligibility.

SECTION 53. Arkansas Code § 16-118-118(a)(3)(A), concerning the definition of "sexual abuse" and the acts that constitute "sexual abuse" in relation to civil actions for vulnerable victims of sexual abuse, is amended to read as follows:

(A) Rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 54. Arkansas Code § 17-3-102(a)(15), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under professional and occupational licensing, is amended to read as follows:

(15) Rape as prohibited in § 5-14-103 and capital rape as prohibited in § 5-14-114;

SECTION 55. Arkansas Code § 17-3-102(e)(5), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under professional and occupational licensing, is amended to read as follows:

(5) Rape as prohibited in § 5-14-103 and capital rape as prohibited in § 5-14-114;

SECTION 56. Arkansas Code § 17-17-312(f)(15), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under auctioneer licensing, is amended to read as follows:

(15) Rape, as prohibited in § 5-14-103 and capital rape as prohibited in § 5-14-114;

SECTION 57. Arkansas Code § 18-16-112(a)(4)(A), concerning the definition of "sex crime" as it pertains to protection for victims of domestic abuse in landlord tenant law, is amended to add an additional subdivision to read as follows:

(xxiii) Capital rape, § 5-14-114;

SECTION 58. Arkansas Code § 20-13-1106(a)(1)(N), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under emergency medical services licensing, is amended to read as

follows:

(N) Rape as prohibited in § 5-14-103 and capital rape as prohibited in § 5-14-114;

SECTION 59. Arkansas Code § 20-16-1305(b), concerning exemptions for medical personnel under the Arkansas Human Heartbeat Protection Act, is amended to read as follows:

(b) This subchapter does not apply to:

(1) An abortion performed to save the life of the mother;

(2)(A) A pregnancy that results from rape under § 5-14-103, capital rape under § 5-14-114, or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement.

(B) The physician or abortion facility shall:

(i) File the documentation that a crime has been reported to law enforcement in the pregnant woman's medical record; and

(ii) Report to the Department of Health the number of abortions performed because of rape or incest; or

(3) A medical emergency.

SECTION 60. Arkansas Code § 20-16-1405(a)(3)(A), concerning exemptions under the Pain-Capable Unborn Child Protection Act, is amended to read as follows:

(3)(A) Subdivision (a)(1) of this section does not apply if the pregnancy results from rape under § 5-14-103, capital rape under § 5-14-114, or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement.

SECTION 61. Arkansas Code § 20-16-2004(a) and (b), concerning an abortion being limited to eighteen (18) weeks' gestation under the Cherish Act, are amended to read as follows:

(a) Except in a medical emergency or if the pregnancy results from a rape under § 5-14-103, capital rape under § 5-14-114, or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement, a person shall not perform, induce, or attempt to perform or induce an abortion unless the physician or referring physician has:

(1) Made a determination of the probable gestational age of the unborn human being according to standard medical practices and techniques used in the medical community; and

(2) Documented the probable gestational age in the medical records of the pregnant woman and, if required, in a report with the Department of Health as described in subsection (c) of this section.

(b) Except in a medical emergency or if the pregnancy results from a rape under § 5-14-103, capital rape under § 5-14-114, or incest under § 5-26-202 when documentation is presented that states that the crime has been reported to law enforcement, a person shall not intentionally or knowingly perform, induce, or attempt to perform or induce an abortion of an unborn human being if the probable gestational age of the unborn human being is determined to be greater than eighteen (18) weeks' gestation.

SECTION 62. Arkansas Code § 20-38-105(c)(2)(A)(v), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check under health and safety licensing for a medical services provider, is amended to read as follows:

(v) Rape, § 5-14-103, and capital rape, § 5-14-114;

SECTION 63. Arkansas Code § 21-15-102(f)(14), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check for a position involving direct contact with children and persons with mental illness or a developmental disability, is amended to read as follows:

(14) Rape, as prohibited in § 5-14-103, or capital rape, as prohibited in § 5-14-114;

SECTION 64. Arkansas Code § 21-15-102(g)(2)(D), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check for a position involving direct contact with children and persons with mental illness or a developmental disability, is amended to read as follows:

(D) Rape, as prohibited in § 5-14-103, or capital rape, as prohibited in § 5-14-114;

SECTION 65. Arkansas Code § 21-15-103(g)(14), concerning the inclusion of rape as a disqualifying offense for the purposes of a background check for

a designated position in a state agency, is amended to read as follows:

(14) Rape, as prohibited in § 5-14-103, or capital rape, as prohibited in § 5-14-114;

SECTION 66. Arkansas Code § 21-15-103(h)(2)(D), concerning the inclusion of rape as an offense for which expungement shall not be considered a conviction for the purposes of a background check for a designated position in a state agency, is amended to read as follows:

(D) Rape, as prohibited in § 5-14-103, or capital rape, as prohibited in § 5-14-114;

SECTION 67. Arkansas Code § 21-15-104(c)(5), concerning the inclusion of rape as an offense that may not be waived for the purposes of a background check by the director of a state agency, is amended to read as follows:

(5) Rape, § 5-14-103, and capital rape, § 5-14-114;