

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

State of Arkansas
95th General Assembly
Regular Session, 2025

A Bill

SENATE BILL 375

By: Senators Stone, M. McKee, J. Bryant, Crowell, B. Davis, Dees, J. Dismang, J. English, Flippo, Gilmore, Hester, Irvin, B. Johnson, M. Johnson, J. Payton, J. Petty, Rice, G. Stubblefield, D. Wallace
By: Representatives J. Moore, Duffield, Eaves, Painter, Hall, Eaton, Achor, Andrews, Beaty Jr., Bentley, Breaux, K. Brown, M. Brown, Joey Carr, Childress, C. Cooper, Cozart, Furman, Gonzales, Hollowell, Jean, Lynch, Maddox, McGrew, Milligan, Nazarenko, Puryear, R. Scott Richardson, Rose, Rye, Torres, Tosh, Underwood, Unger, Vaught, Walker, Womack

For An Act To Be Entitled

AN ACT TO CREATE THE OFFENSE OF CAPITAL RAPE; TO
AMEND A PORTION OF ARKANSAS CODE WHICH RESULTED FROM
INITIATED ACT 3 OF 1936; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE THE OFFENSE OF CAPITAL RAPE;
AND TO AMEND A PORTION OF ARKANSAS CODE
WHICH RESULTED FROM INITIATED ACT 3 OF
1936.

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

SECTION 1. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) Adults who rape children “are the epitome of moral depravity.” Kennedy v. Louisiana, 554 U.S. 407, 467 (2008) (Alito, J., dissenting);

(2) The United States Supreme Court gravely erred in Kennedy v. Louisiana when it held that the Eight Amendment prohibited imposition of the death penalty for rape of a child when the crime did not result in death of the victim;

(3) The United States Supreme Court reached its conclusion by asking whether “standards of decency” had evolved to render a death sentence



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for child rapists unconstitutional;

(4) To determine prevailing standards of decency, the United States Supreme Court canvassed the statutes of the fifty states and the United States Government and found that only six (6) states allowed the death penalty for child rape;

(5) The outcome in Kennedy v. Louisiana may have been different if more states had statutes providing that child rapists could receive the death penalty;

(6)(A) In Furman v. Georgia, 408 U.S. 238 (1972), the litigants, and some Justices of the United States Supreme Court, presumed that the death penalty itself was unconstitutional, but in the years following that decision, a majority of states enacted new capital punishment statutes.

(B) The United State Supreme Court cited that wave of enactments as important evidence supporting the constitutionality of the death penalty in Gregg v. Georgia, 428 U.S. 153, 179-81 (1976); and

(7) The State of Arkansas believes that the harms caused by child rapists can warrant capital punishment.

SECTION 2. 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) He or she engages in sexual intercourse or deviate sexual activity with another person who is thirteen (13) years of age or younger and causes or threatens to cause serious physical injury to that person;

(2) 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)(2)(A) of this section, the person engages in sexual intercourse or deviate sexual activity with another person who is thirteen (13) years of age or younger;

(3) 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 thirteen (13) years of age or younger; or

(4) He or she engages in sexual intercourse or deviate sexual activity with another person who is thirteen (13) years of age or younger after previously having been convicted of rape under § 5-14-103(a)(3) 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.

(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 twenty (20) years' imprisonment under § 16-93-621(a)(1)(A).

(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 not a defense to a prosecution for capital rape that the victim consented to the conduct.

(d) A court may issue a permanent no-contact order when a defendant has been found guilty of capital rape.

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

SECTION 3. Arkansas Code § 5-1-109(a)(1), concerning offenses that may be commenced at any time, is amended to read as follows:

(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, if the offense is a felony;
- (F) Capital rape, § 5-14-114;
- (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;
- ~~(M)~~(N) Computer exploitation of a child in the first degree, § 5-27-605; and

~~(N)~~(O) Fertility treatment fraud, § 5-37-220.

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

(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(1) and (2), concerning the classification of attempt offenses, are amended to read as follows:

(1) Class Y felony if the offense attempted is capital murder or capital rape;

(2) Class A felony if the offense attempted is treason or a Class Y felony other than capital murder or capital rape;

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

(b) Criminal solicitation is a:

(1) Class Y felony if the offense solicited is capital murder or capital rape;

(2) Class A felony if the offense solicited is ~~capital murder,~~ treason, or a Class Y felony other than capital murder or capital rape;

~~(2)~~(3) Class B felony if the offense solicited is a Class A

felony;

~~(3)~~(4) Class C felony if the offense solicited is a Class B

felony;

~~(4)~~(5) Class D felony if the offense solicited is a Class C

felony;

~~(5)~~(6) Class A misdemeanor if the offense solicited is a Class D felony or an unclassified felony;

~~(6)~~(7) Class B misdemeanor if the offense solicited is a Class A misdemeanor;

~~(7)~~(8) Class C misdemeanor if the offense solicited is a Class B misdemeanor; or

~~(8)~~(9) Violation if the offense solicited is a Class C misdemeanor or an unclassified misdemeanor.

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

5-3-404. Classification.

Criminal conspiracy is a:

(1) Class Y felony if an object of the conspiracy is commission of capital murder or capital rape;

(2) Class A felony if an object of the conspiracy is commission of ~~capital murder~~, treason, or a Class Y felony other than capital murder or capital rape;

~~(2)~~(3) Class B felony if an object of the conspiracy is commission of a Class A felony;

~~(3)~~(4) Class C felony if an object of the conspiracy is commission of a Class B felony;

~~(4)~~(5) Class D felony if an object of the conspiracy is commission of a Class C felony;

~~(5)~~(6) Class A misdemeanor if an object of the conspiracy is commission of a Class D felony or an unclassified felony;

~~(6)~~(7) Class B misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor; or

~~(7)~~(8) 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 or treason~~ offense, in which case, he or she shall be sentenced to life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment if the offense is capital murder, § 5-10-101, or to life imprisonment with the possibility of parole after serving a minimum of twenty (20) years' imprisonment, if the offense is capital rape, § 5-14-114, or treason, § 5-51-201.

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, murder in the second degree, § 5-10-103, or a felony ineligible to receive earned release credits as defined in § 16-93-1802, 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;

~~(vi)~~(vii) Engaging in a continuing criminal enterprise, § 5-64-405;

~~(vii)~~(viii) Furnishing a prohibited article, possessing a prohibited article, using a prohibited article, or delivering a prohibited article, § 5-54-119; or

~~(viii)~~(ix) A felony ineligible to receive earned release credits as defined in § 16-93-1802.

(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.

(C) This subdivision (e)(3) does not prohibit a period of post-release supervision as authorized in § 16-93-1801 et seq. and § 16-93-1901 et seq.

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;
- (8) Capital rape, § 5-14-114;
- (9) Sexual assault in the first degree, § 5-14-124;
- ~~(9)~~(10) Domestic battering in the first degree, § 5-26-303;
- ~~(10)~~(11) Domestic battering in the second degree, § 5-26-304; or
- ~~(11)~~(12) 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:

- (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;
 - (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);
 - ~~(F)~~(G) Engaging in a continuing criminal enterprise, § 5-64-405;
 - ~~(G)~~(H) Furnishing a prohibited article, possessing a prohibited article, using a prohibited article, or delivering a prohibited article, § 5-54-119; or
 - ~~(H)~~(I) A felony ineligible to receive earned release

credits as defined in § 16-93-1802.

SECTION 12. Arkansas Code § 5-4-501(c)(2)(A), concerning habitual offenders and the offenses considered a serious felony 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, 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;
 - (vii) Capital rape, § 5-14-114;
 - (viii) Sexual assault in the first degree, § 5-14-124;
 - ~~(viii)~~(ix) Causing a catastrophe, § 5-38-202(a);
 - ~~(ix)~~(x) Aggravated residential burglary, § 5-39-204;
 - ~~(x)~~(xi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
 - ~~(xi)~~(xii) Capital murder, § 5-10-101; or
 - ~~(xii)~~(xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107; or

SECTION 13. Arkansas Code § 5-4-501(d)(2)(A), concerning habitual offenders and the rape offenses that are considered a felony 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;
 - (vi) Capital rape, § 5-14-114;

~~(vii)~~ (vii) Battery in the first degree, § 5-13-201;
~~(vii)~~~~(viii)~~ (viii) Terroristic act, § 5-13-310;
~~(viii)~~~~(ix)~~ (ix) Sexual assault in the first degree, § 5-14-124;
~~(ix)~~~~(x)~~ (x) Sexual assault in the second degree, § 5-14-125;
~~(x)~~~~(xi)~~ (xi) Domestic battering in the first degree, § 5-26-303;
~~(xi)~~~~(xii)~~ (xii) Aggravated residential burglary, § 5-39-204;
~~(xii)~~~~(xiii)~~ (xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
~~(xiii)~~ (xiv) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;
~~(xiv)~~~~(xv)~~ (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;
- (h) Capital rape, § 5-14-114;
- (i) Battery in the first degree, § 5-13-201;
- ~~(i)~~~~(j)~~ (j) Domestic battering in the first degree, § 5-26-303; or
- ~~(j)~~~~(k)~~ (k) Aggravated residential burglary, § 5-39-204;
- ~~(xv)~~~~(xvi)~~ (xvi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or
- ~~(xvi)~~~~(xvii)~~ (xvii) Capital murder, § 5-10-101; or

SECTION 14. Arkansas Code § 5-4-601 is amended to read as follows:
5-4-601. Legislative intent - Definition.

(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, treason, § 5-51-201, 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, treason, § 5-51-201, 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.~~

(c) As used in this subchapter, "capital offense" means capital murder, §5-10-101, treason, § 5-51-201, and capital rape, § 5-14-114.

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~~ offense 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, 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(a) and (b), concerning application for executive clemency, are 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, 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.

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 a 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(b)-(d), concerning defendants with intellectual disabilities, are amended to read as follows:

(b) No defendant with intellectual disabilities at the time of committing capital murder, § 5-10-101, treason, § 5-51-201, 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, treason, § 5-51-201, 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, treason, § 5-51-201, 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.

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;
- (7) Capital rape, § 5-14-114;
- (8) Sexual assault in the second degree, § 5-14-125;

~~(8)~~(9) A felony offense of domestic battering or assault on a family or household member under §§ 5-26-303 – 5-26-309;

~~(9)~~(10) Unlawful discharge of a firearm from a vehicle, § 5-74-107; or

~~(10)~~(11) Terroristic act, § 5-13-310.

SECTION 21. Arkansas Code § 5-4-801(2), concerning the definition "eligible offender" relating to an offender who is eligible for community service work, is amended to read as follows:

(2) "Eligible offender" means any person convicted of a misdemeanor offense or felony offense other than:

(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) Manslaughter, § 5-10-104;

(E) Rape, § 5-14-103;

(F) Capital rape, § 5-14-114;

(G) Kidnapping, § 5-11-102;

~~(G)~~(H) Aggravated robbery, § 5-12-103;

~~(H)~~(I) Driving or boating while intoxicated, second or subsequent offense, § 5-65-103;

~~(I)~~(J) Negligent homicide, § 5-10-105;

~~(J)~~(K) Trafficking a controlled substance, § 5-64-440;

~~(K)~~(L) Any felony involving violence as listed under § 5-4-501(d)(2); or

~~(L)~~(M) Any offense requiring registration under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.; and

SECTION 22. Arkansas Code § 5-10-101(a)(1)(A), concerning the offense of capital murder 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;

(iii) Capital rape, § 5-14-114;

(iv) Kidnapping, § 5-11-102;

~~(iv)~~(v) Vehicular piracy, § 5-11-105;
~~(v)~~(vi) Robbery, § 5-12-102;
~~(vi)~~(vii) Aggravated robbery, § 5-12-103;
~~(vii)~~(viii) Residential burglary, § 5-39-201(a);
~~(viii)~~(ix) Commercial burglary, § 5-39-201(b);
~~(ix)~~(x) Aggravated residential burglary, § 5-39-204;
~~(x)~~(xi) 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)~~(xii) First degree escape, § 5-54-110; and

SECTION 23. Arkansas Code § 5-14-103(c)(2), concerning the offense of rape, is amended to read as follows:

(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.

SECTION 24. Arkansas Code § 5-14-103, concerning the offense of rape, is amended to add an additional subsection to read as follows:

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

SECTION 25. Arkansas Code § 5-42-203(4), concerning the definition of "crime of violence" within the Arkansas Criminal Use of Property or Laundering Criminal Proceeds Act, is amended to read as follows:

(4) "Crime of violence" means any violation of Arkansas law in which a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person, specifically including rape or capital rape;

SECTION 26. 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, as prohibited in § 5-14-114.

SECTION 27. Arkansas Code § 5-73-202(1), concerning the definition of "crime of violence" 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;

SECTION 28. Arkansas Code § 5-74-103(2), concerning the definition of "crime of violence" in the Arkansas Criminal Gang, Organization, or Enterprise Act, is amended to read as follows:

(2) "Crime of violence" means any violation of Arkansas law if a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person, specifically including rape or capital rape;

SECTION 29. Arkansas Code § 5-74-202(2), concerning the definition of "crime of violence" relating to recruiting gang members, is amended to read as follows:

(2) "Crime of violence" means any violation of Arkansas law if a

person purposely or knowingly causes, or threatens to cause, death or physical injury to another person, specifically including rape, § 5-14-103, or capital rape, § 5-14-114;

SECTION 30. Arkansas Code § 5-79-101(a)(1), concerning the offense of criminal possession of body armor, is amended to read as follows:

(1) Has been found guilty of or has pleaded guilty or nolo contendere to any of the following offenses:

- (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) Manslaughter, § 5-10-104;
- (E) Aggravated robbery, § 5-12-103;
- (F) Battery in the first degree, § 5-13-201;
- (G) Aggravated assault, § 5-13-204;
- (H) Capital rape, § 5-14-114;

(I) A felony violation of § 5-64-401 et seq.; or

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

SECTION 31. Arkansas Code § 6-17-410(c)(8), concerning the disqualifying offenses for teacher licensure, is amended to read as follows:

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

SECTION 32. Arkansas Code § 6-17-414(b)(8), concerning the disqualifying offenses for employment by an educational entity in a nonlicensed staff position or as a registered volunteer, is amended to read as follows:

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

SECTION 33. Arkansas Code § 9-10-121(a), concerning termination of parental rights of putative fathers convicted of 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 34. Arkansas Code § 9-27-303(15)(B), concerning the definition of "delinquent juvenile" under the Arkansas Juvenile Code of 1989, is amended to read as follows:

(B) Any juvenile charged with capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, subject to extended juvenile jurisdiction;

SECTION 35. Arkansas Code § 9-27-318(b)(1)(K), concerning the filing of felony offenses committed by a juvenile in 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;
- (vii) Capital rape, § 5-14-114;
- (viii) Battery in the first degree, § 5-13-201;
- ~~(viii)~~(ix) First degree escape, § 5-54-110; and
- ~~(ix)~~(x) Second degree escape, § 5-54-111;

SECTION 36. Arkansas Code § 9-27-318(c), concerning the filing of felony offenses committed by a juvenile in 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;
- (F) Capital rape, § 5-14-114;
- (G) Battery in the first degree, § 5-13-201; or
- ~~(G)~~(H) Terroristic act, § 5-13-310.

SECTION 37. Arkansas Code § 9-27-356(a) 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;
- (2) Capital rape, § 5-14-114;
- (3) Sexual assault in the first degree, § 5-14-124;
- ~~(3)~~(4) Sexual assault in the second degree, § 5-14-125;
- ~~(4)~~(5) Incest, § 5-26-202; or
- ~~(5)~~(6) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303.

SECTION 38. 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;
- (2) Capital rape, § 5-14-114;
- (3) Sexual assault in the first degree, § 5-14-124;
- ~~(3)~~(4) Sexual assault in the second degree, § 5-14-125;
- ~~(4)~~(5) Incest, § 5-26-202;
- ~~(5)~~(6) Capital murder, § 5-10-101;
- ~~(6)~~(7) Murder in the first degree, § 5-10-102;
- ~~(7)~~(8) Murder in the second degree, § 5-10-103;

~~(8)~~(9) Kidnapping, § 5-11-102;
~~(9)~~(10) Aggravated robbery, § 5-12-103;
~~(10)~~(11) Terroristic act, § 5-13-310; and
~~(11)~~(12) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

SECTION 39. Arkansas Code § 9-27-501(a), concerning offenses that qualify for extended juvenile jurisdiction, is amended to read as follows:

(a) The state may request an extended juvenile jurisdiction designation in a delinquency petition or file a separate motion if the:

(1) Juvenile, under thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2)(A) Juvenile, thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114.

(B) However, juveniles thirteen (13) years of age at the time of the alleged offense shall have an evaluation pursuant to § 9-27-502, and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity;

(3) Juvenile, fourteen (14) or fifteen (15) years of age at the time of the alleged offense, is charged with any of the following crimes:

- (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) Battery in the first degree, § 5-13-201;
- (G) Battery in the second degree in violation of § 5-13-202(a)(2), (3), or (4);
- (H) Aggravated assault, § 5-13-204;
- (I) Terroristic act, § 5-13-310;
- (J) Rape, § 5-14-103;
- (K) Capital rape, § 5-14-114;

- (L) Sexual assault in the second degree, § 5-14-125;
- ~~(L)~~(M) First degree escape, § 5-54-110;
- ~~(M)~~(N) Second degree escape, § 5-54-111;
- ~~(N)~~(O) Criminal use of prohibited weapons, § 5-73-104;
- ~~(O)~~(P) Possession of a handgun on school property, § 5-73-119(b)(1)(A);
- ~~(P)~~(Q) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- ~~(Q)~~(R) Any felony involving a firearm;
- ~~(R)~~(S) Soliciting or recruiting a minor to join or to remain a member of a criminal gang, organization, or enterprise, § 5-74-203;
- or
- ~~(S)~~(T) 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) Battery in the first degree, § 5-13-201;
 - (vii) Rape, § 5-14-103;
 - (viii) Capital rape, § 5-14-114;
 - (ix) First degree escape, § 5-54-110; and
 - ~~(ix)~~(x) Second degree escape, § 5-54-111; or
- (4) Juvenile is at least sixteen (16) years of age when he or she engages in conduct that, if committed by an adult, would be a felony.

SECTION 40. Arkansas Code § 9-27-502(b)(1) and (2), concerning juvenile competency and fitness determinations, are amended to read as follows:

(b)(1)(A) For a juvenile under thirteen (13) years of age at the time of the alleged offense and who is charged with capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, there shall be a presumption that:

- (i) The juvenile is unfit to proceed; and
- (ii) He or she lacked capacity to:

(a) Possess the necessary mental state required for the offense charged;

(b) Conform his or her conduct to the requirements of law; and

(c) Appreciate the criminality of his or her conduct.

(B) The prosecution must overcome these presumptions by a preponderance of the evidence.

(2)(A) For a juvenile under thirteen (13) years of age and who is charged with capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, the court shall order an evaluation to be performed in accordance with § 5-2-327 or § 5-2-328, or both.

(B) Upon an order for evaluation, all proceedings shall be suspended and the period of delay until the juvenile is determined fit to proceed shall constitute an excluded period for the speedy trial provisions of Rule 28 of the Arkansas Rules of Criminal Procedure.

SECTION 41. Arkansas Code § 9-27-507(b)(2), concerning the extended juvenile jurisdiction court review hearing, is amended to read as follows:

(2)(A)(i) Exercise its discretion to impose the full range of adult sentencing available in the criminal division of circuit court, including probation, suspended imposition of sentence, and imprisonment.

(ii) However, a sentence of imprisonment shall not exceed forty (40) years except for juveniles adjudicated for capital murder, § 5-10-101, ~~and~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, who may be sentenced for any term, up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence, parole, or post-release transfer for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention facility or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

SECTION 42. Arkansas Code § 9-27-507(e)(4) and (5), concerning the extended juvenile jurisdiction court review hearing, are amended to read as follows:

(4)(A) Following a hearing, the court may enter any of the following dispositions:

(i) Release the juvenile;
(ii) Amend or add any juvenile disposition; and
(iii)(a) Exercise its discretion to impose the full range of sentencing available in circuit court, including probation, suspended imposition of sentence, and imprisonment.

(b) A sentence of imprisonment shall not exceed forty (40) years, except juveniles adjudicated for capital murder, § 5-10-101, ~~and~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, may be sentenced for any term, up to and including life.

(B) Statutory provisions prohibiting or limiting probation or suspended imposition of sentence, parole, or post-release transfer for offenses when committed by an adult shall not apply to juveniles sentenced as extended juvenile jurisdiction offenders.

(C) A juvenile shall receive credit for time served in a juvenile detention or any juvenile facility.

(D)(i) A court may not order an absolute release of an extended juvenile jurisdiction offender who has been adjudicated delinquent for capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114.

(ii) If release is ordered, the court shall impose a period of probation for not less than three (3) years.

(5)(A) A juvenile committed to the Division of Youth Services under extended juvenile jurisdiction shall not remain in the physical custody of the division beyond the date of his or her twenty-first birthday, even if the court fails to provide a hearing before the release.

(B) If a court order imposing an adult sentence or granting the absolute release of a juvenile is not entered on or before the juvenile's twenty-first birthday, the division shall release the juvenile

from its custody.

(C) Nothing in this subdivision (e)(5) shall limit the court's jurisdiction to impose a period of probation on offenders adjudicated delinquent for capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, as required by subdivision (b)(2)(D) of this section.

SECTION 43. Arkansas Code § 9-27-510(c)(1)(B), concerning juveniles who are subject to parole or post-release supervision, is amended to read as follows:

(B) Juveniles adjudicated for capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, are subject to parole or post-release supervision.

SECTION 44. 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;
- (I) Capital rape, § 5-14-114;

(J) Sexual assault in the first degree, § 5-14-124;
~~(J)~~(K) Sexual assault in the second degree, § 5-14-125;
~~(K)~~(L) Aggravated assault upon a law enforcement officer
or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
and
~~(L)~~(M) Trafficking of persons, § 5-18-103.

SECTION 45. 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 46. Arkansas Code § 12-12-104(f)(2), concerning the definition of "sex offense", is amended to read as follows:

(2) "Sex offense" means:

(A) Rape, § 5-14-103;

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

(C) Capital rape, § 5-14-114;

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

~~(D)~~(E) Sexual assault in the second degree, § 5-14-125;

~~(E)~~(F) Sexual assault in the third degree, § 5-14-126;

~~(F)~~(G) Sexual assault in the fourth degree, § 5-14-127;

~~(G)~~(H) Incest, § 5-26-202;

~~(H)~~(I) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

~~(I)~~(J) Transportation of minors for prohibited sexual conduct, § 5-27-305;

~~(J)~~(K) Employing or consenting to use of child in sexual performance, § 5-27-402;

~~(K)~~(L) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

~~(L)~~(M) Possession or use of child sexual abuse material, § 5-27-603;

~~(M)~~(N) Computer exploitation of a child in the first degree, § 5-27-605(a);

~~(N)~~(O) Promoting prostitution in the first degree, § 5-70-104;

~~(O)~~(P) Stalking, § 5-71-229;

~~(P)~~(Q) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (f)(2);

~~(Q)~~(R) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (f)(2); or

~~(R)~~(S) Sexual extortion, § 5-14-113; and

SECTION 47. Arkansas Code § 12-12-313(e), concerning video testimony of State Crime Laboratory witnesses, is amended to read as follows:

(e) Except trials in which the defendant is charged with capital murder, § 5-10-101, ~~or~~ murder in the first degree, § 5-10-102, or capital rape, § 5-14-114, in all criminal trials upon motion of the prosecutor the court may allow the prosecutor to present the testimony of the appropriate analyst by contemporaneous transmission from a laboratory facility via two-way closed-circuit or satellite-transmitted television which shall allow the examination and cross-examination of the analyst to proceed as though the analyst were testifying in the courtroom:

(1) After notice to the defendant;

(2) Upon proper showing of good cause and sufficient safeguards to satisfy all state and federal constitutional requirements of oath, confrontation, cross-examination, and observation of the witness's demeanor and testimony by the defendant, the court, and the jury; and

(3) Absent a showing of prejudice by the defendant.

SECTION 48. Arkansas Code § 12-12-903(13)(A)(i), concerning 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:

(i) The following offenses:

- (a) Rape, § 5-14-103;
- (b) Sexual indecency with a child, § 5-14-110,
if the offense is a felony;
- (c) Capital rape, § 5-14-114;
- (d) Sexual assault in the first degree, § 5-14-124;
- ~~(d)~~(e) Sexual assault in the second degree, § 5-14-125;
- ~~(e)~~(f) Sexual assault in the third degree, § 5-14-126;
- ~~(f)~~(g) Sexual assault in the fourth degree, § 5-14-127;
- ~~(g)~~(h) Incest, § 5-26-202;
- ~~(h)~~(i) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- ~~(i)~~(j) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- ~~(j)~~(k) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- ~~(k)~~(l) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
- ~~(l)~~(m) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- ~~(m)~~(n) Promoting prostitution in the first degree, § 5-70-104;
- ~~(n)~~(o) Stalking, § 5-71-229, when ordered by the sentencing court to register as a sex offender;
- ~~(o)~~(p) Indecent exposure, § 5-14-112, if a felony level offense;
- ~~(p)~~(q) Exposing another person to human immunodeficiency virus, § 5-14-123, when ordered by the sentencing court to register as a sex offender;
- ~~(q)~~(r) Kidnapping pursuant to § 5-11-102(a), when the victim is a minor and the offender is not the parent of the victim;
- ~~(r)~~(s) False imprisonment in the first degree and false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when

the victim is a minor and the offender is not the parent of the victim;

~~(s)~~(t) Permitting abuse of a minor, § 5-27-221, if the abuse of the minor consisted of sexual intercourse, deviant sexual activity, or sexual contact;

~~(t)~~(u) Possession or use of child sexual abuse material, § 5-27-603;

~~(u)~~(v) Computer exploitation of a child, § 5-27-605;

~~(v)~~(w) Permanent detention or restraint, § 5-11-106, when the offender is not the parent of the victim;

~~(w)~~(x) Distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child, § 5-27-602;

~~(x)~~(y) Internet stalking of a child, § 5-27-306;

~~(y)~~(z) Crime of video voyeurism, § 5-16-101, if a felony level offense;

~~(z)~~(aa) Voyeurism, § 5-16-102, if a felony level offense;

~~(aa)~~(bb) Any felony-homicide offense under § 5-10-101, § 5-10-102, or § 5-10-104 if the underlying felony is an offense listed in this subdivision (13)(A)(i);

~~(bb)~~(cc) Sexually grooming a child, § 5-27-307;

~~(cc)~~(dd) Trafficking of persons under § 5-18-103(a)(4);

~~(dd)~~(ee) Patronizing a victim of human trafficking, § 5-18-104; and

~~(ee)~~(ff) Sexual extortion, § 5-14-113;

SECTION 49. 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 50. Arkansas Code § 13-4-409(c)(1), concerning which items relating to criminal investigations should be retained by a sheriff's office for ninety-nine (99) years, is amended to read as follows:

(c)(1) An item relating to the investigation of any of the following crimes shall be retained for ninety-nine (99) years:

- (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;
- (E) Capital rape, § 5-14-114;
- (F) Sexual assault in the first degree, § 5-14-124; and
- ~~(F)~~(G) Arson, § 5-38-301.

SECTION 51. Arkansas Code § 16-33-305, resulting from Initiated Act 3 of 1936, 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, treason, § 5-51-201, 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, treason, § 5-51-201, 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 52. 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 53. Arkansas Code § 16-80-104(a), concerning comprehensive mental health evaluation for juvenile offenders, is amended to read as follows:

(a) If a comprehensive mental health evaluation is not performed at the request of the minor convicted of capital murder, § 5-10-101, capital rape, § 5-14-114, or murder in the first degree, § 5-10-102, before his or her trial or before he or she is sentenced, the circuit court shall ensure that a comprehensive mental health evaluation is conducted on the minor by an adolescent mental health professional licensed in the state before the minor's entry into the Division of Correction for a sentence of life imprisonment.

SECTION 54. Arkansas Code § 16-87-205(c)(1), concerning 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 capital murder cases a case involving capital murder, § 5-10-101, treason, § 5-51-201, 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 capital murder cases, a case involving capital murder, § 5-10-101, treason, § 5-51-201, 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 55. Arkansas Code § 16-87-212(c) is amended to read as follows:

(c) At the discretion of the commission, expenses in a case involving capital murder cases, § 5-10-101, treason, § 5-51-201, 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 56. 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, treason, § 5-51-201, 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, treason, § 5-51-201, 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 57. 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;
 - (7) Capital rape, § 5-14-114;
 - (8) Battery in the first degree, § 5-13-201; or
 - ~~(8)~~(9) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony.

SECTION 58. Arkansas Code § 16-90-803(b)(5), concerning voluntary presumptive standards in sentencing, is amended to read as follows:

(5) Capital murder, § 5-10-101, treason, § 5-51-201, and capital rape, § 5-14-114, are ~~is~~ excluded from the sentencing standards and ~~is~~ are subject to the procedures in § 5-4-601 et seq.

SECTION 59. Arkansas Code § 16-90-1101(6), concerning the definition of “sex offense” in the Rights of Victims of Crime subchapter, is amended to read as follows:

- (6) “Sex offense” means:
- (A) Rape, § 5-14-103;
 - (B) Sexual indecency with a child, § 5-14-110, if the offense is a felony;
 - (C) Capital rape, § 5-14-114;
 - (D) Sexual assault in the first degree, § 5-14-124;
 - ~~(D)~~(E) Sexual assault in the second degree, § 5-14-125;

- ~~(E)~~(F) Sexual assault in the third degree, § 5-14-126;
- ~~(F)~~(G) Sexual assault in the fourth degree, § 5-14-127;
- ~~(G)~~(H) Incest, § 5-26-202;
- ~~(H)~~(I) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- ~~(I)~~(J) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- ~~(J)~~(K) Employing or consenting to use of a child in sexual performance, § 5-27-402;
- ~~(K)~~(L) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- ~~(L)~~(M) Possession or use of child sexual abuse material, § 5-27-603;
- ~~(M)~~(N) Computer exploitation of a child in the first degree, § 5-27-605(a);
- ~~(N)~~(O) Promoting prostitution in the first degree, § 5-70-104;
- ~~(O)~~(P) Stalking, § 5-71-229;
- ~~(P)~~(Q) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (6);
- ~~(Q)~~(R) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (6);
- ~~(R)~~(S) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (6); or
- ~~(S)~~(T) Sexual extortion, § 5-14-113;

SECTION 60. Arkansas Code § 16-91-110(b)(2), concerning bail bonds, is 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, treason, § 5-51-201, or capital rape, § 5-14-114, the court shall not release the defendant on bail or otherwise pending appeal or for any reason.

SECTION 61. 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, capital rape, or treason prosecutions or ~~capital murder~~ post-conviction proceedings challenging capital murder, treason, or capital rape convictions in Arkansas courts.

SECTION 62. 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 63. 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) Nine (9) 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 64. Arkansas Code § 16-93-615(b)(1)(A), concerning the offenses for which transfer is discretionary, is amended to read as follows:

(A) Unless the offense is listed under § 16-93-612(e)(1), the following offenses:

- (i) Capital murder, § 5-10-101, or attempted capital murder;
- (ii) Murder in the first degree, § 5-10-102, or attempted murder in the first degree;
- (iii) Murder in the second degree, § 5-10-103;

- (iv) Manslaughter, § 5-10-104;
- (v) Negligent homicide, § 5-10-105; ~~or~~
- (vi) Capital rape, § 5-14-114; or
- (vii) An offense under § 5-54-201 et seq.;

SECTION 65. Arkansas Code § 16-93-621(a)(3), concerning credit for meritorious good time for juvenile offenders under the Fair Sentencing of Minors Act of 2017, is amended to read as follows:

(3) Credit for meritorious good time or earned release credits shall not be applied to calculations of time served under this subsection for minors convicted and sentenced for capital murder, § 5-10-101(c), capital rape, § 5-14-114, or treason, § 5-51-201, or when a life sentence is imposed for murder in the first degree, § 5-10-102.

SECTION 66. Arkansas Code § 16-93-702(b), concerning notifying victims of parole hearings for prisoners convicted of certain offenses, is amended to read as follows:

(b) If the person whose parole is being considered by the board was 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 any violent or sexual offense, the board shall also notify the victim of the crime, or the victim's next of kin, of the parole hearing and shall solicit written or oral recommendations of the victim or the victim's next of kin regarding the granting of the parole, unless the prosecuting attorney has notified the board at the time of commitment of the prisoner that the victim or the victim's next of kin does not want to be notified of future parole hearings.

SECTION 67. Arkansas Code § 16-93-1802(1)(B), concerning felonies for which a prisoner is ineligible to receive earned release credits, is amended to read as follows:

(B) "Felony ineligible to receive earned release credits" includes only the following felony offenses, or an attempt, solicitation, or conspiracy to commit one (1) of the following felony offenses:

- (i) Capital murder, § 5-10-101;
- (ii) Murder in the first degree, § 5-10-102;
- (iii) Aggravated death by delivery, § 5-10-202;

(iv) Kidnapping, § 5-11-102, if a Class Y felony;
(v) Aggravated robbery, § 5-12-103;
(vi) Rape, § 5-14-103;
(vii) Capital rape, § 5-14-114;
(viii) Trafficking of persons, § 5-18-103;
~~(viii)~~(ix) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
~~(ix)~~(x) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
~~(x)~~(xi) Transportation of minors for prohibited sexual conduct, § 5-27-305;
~~(xi)~~(xii) Internet stalking of a child, § 5-27-306;
~~(xii)~~(xiii) Sexually grooming a child, § 5-27-307, if a felony offense;
~~(xiii)~~(xiv) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
~~(xiv)~~(xv) Computer exploitation of a child, § 5-27-605;
~~(xv)~~(xvi) Causing a catastrophe, § 5-38-202(a);
~~(xvi)~~(xvii) Aggravated residential burglary, § 5-39-204, if a Class Y felony;
~~(xvii)~~(xviii) Treason, § 5-51-201;
~~(xviii)~~(xix) Fleeing, § 5-54-125, if a Class B felony;
~~(xix)~~(xx) Predatory marketing of fentanyl to minors, § 5-64-421(i); and
~~(xx)~~(xxi) Possession of firearms by certain persons, § 5-73-103, if a Class B felony; and

SECTION 68. Arkansas Code § 16-118-118(a)(3), 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:

(3) "Sexual abuse" means the commission of one (1) or more of the following acts or offenses:

(A) Rape, § 5-14-103;

(B) Capital rape, § 5-14-114;
 (C) Sexual assault in the first degree, § 5-14-124;
~~(C)~~(D) Sexual assault in the second degree, § 5-14-125;
~~(D)~~(E) Engaging children in sexually explicit conduct for use in a visual or print medium, § 5-27-303;
~~(E)~~(F) Transportation of minors for prohibited sexual conduct, § 5-27-305;
~~(F)~~(G) Use of children in sexual performances, § 5-27-401 et seq.;
~~(G)~~(H) Unlawful sexual contact with a vulnerable victim;
 and
~~(H)~~(I) Unlawful sexually explicit conduct with a vulnerable victim;

SECTION 69. Arkansas Code § 17-3-102(a)(15), concerning disqualifying offenses for the purpose of a background check under professional and occupational licensing, is amended to read as follows:

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

SECTION 70. 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 or capital rape as prohibited in § 5-14-114;

SECTION 71. 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, or capital rape, as prohibited in § 5-14-114;

SECTION 72. 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 73. 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 or capital rape as prohibited in § 5-14-114;

SECTION 74. Arkansas Code § 20-38-105(c)(2)(A), concerning disqualifying offenses for the purposes of a background check under health and safety licensing for a medical services provider, is amended to read as follows:

(A) Any of the following offenses by any court in the State of Arkansas:

- (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) Rape, § 5-14-103;
- (vi) Capital rape, § 5-14-114;
- (vii) Sexual assault in the first degree, § 5-14-124;
- ~~(vii)~~(viii) Sexual assault in the second degree, § 5-14-125;
- ~~(viii)~~(ix) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
- ~~(ix)~~(x) Abuse of an endangered or impaired person, § 5-28-103, if it is a felony;
- ~~(x)~~(xi) Arson, § 5-38-301;
- ~~(xi)~~(xii) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and
- ~~(xii)~~(xiii) Sexual extortion, § 5-14-113;

SECTION 75. 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 76. 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 77. 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 78. 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 79. Arkansas Code § 21-15-104(c), concerning offenses that may not be waived by the director of a state agency for the purposes of a background check, is amended to read as follows:

(c) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, the following offenses may not be waived by the director of a state agency:

- (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, § 5-11-102;

- (5) Rape, § 5-14-103;
- (6) Capital rape, § 5-14-114;
- (7) Sexual assault in the first degree, § 5-14-124;
- ~~(7)~~(8) Sexual assault in the second degree, § 5-14-125;
- ~~(8)~~(9) Sexual indecency with a child, § 5-14-110, if the offense is a felony;
- ~~(9)~~(10) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
- ~~(10)~~(11) Endangering the welfare of a minor in the first degree, § 5-27-205;
- ~~(11)~~(12) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
- ~~(12)~~(13) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
- ~~(13)~~(14) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- ~~(14)~~(15) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- ~~(15)~~(16) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- ~~(16)~~(17) Adult abuse that constitutes a felony, § 5-28-103;
- ~~(17)~~(18) Arson, § 5-38-301;
- ~~(18)~~(19) Possession or use of child sexual abuse material, § 5-27-603;
- ~~(19)~~(20) Computer exploitation of a child in the first degree, § 5-27-605;
- ~~(20)~~(21) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and
- ~~(21)~~(22) Sexual extortion, § 5-14-113.