

Arkansas

5-14-101. Definitions.

As used in this chapter, unless the context otherwise requires:

- (1) "Deviate sexual activity" means any act of sexual gratification involving:
 - (A) The penetration, however slight, of the anus or mouth of one person by the penis of another person; or
 - (B) The penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;
- (2) "Forcible compulsion" means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person;
- (3) "Guardian" means a parent, stepparent, legal guardian, legal custodian, foster parent, or anyone who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor.
- (4)(A) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person:
 - (i) Incapable of understanding the nature and consequences of sexual acts; or
 - (ii) Unaware the sexual act is occurring.
- (B) A determination that a person is mentally defective shall not be based solely on the person's intelligence quotient;
- (5) "Mentally incapacitated" means that a person is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance:
 - (A) Administered to the person without the person's consent; or
 - (B) Which renders the person unaware the sexual act is occurring;
- (6) "Physically helpless" means that a person is:
 - (A)(i) Unconscious; or
 - (ii) Physically unable to communicate lack of consent; or
 - (B) Rendered unaware the sexual act is occurring;
- (7) "Public place" means a publicly or privately owned place to which the public or substantial numbers of people have access;
- (8) "Public view" means observable or likely to be observed by a person in a public place;
- (9) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female; and
- (10) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis.

History. Acts 1975, No. 280, § 1801; 1985, No. 327, § 1; 1985, No. 563, § 1; A.S.A. 1947, § 41-1801; Acts 1995, No. 525, § 1; 2001, No. 1724, § 1.

5-14-102. In general.

(a) The definition of an offense that excludes conduct with a spouse shall not be construed to preclude accomplice liability of a spouse.

(b) When the criminality of conduct depends on a child's being below the age of fourteen (14) years and the actor is twenty (20) years of age or older, it is no defense that the actor did not know the age of the child or reasonably believed the child to be fourteen (14) years of age or older.

(c)(1) When criminality of conduct depends on a child's being below the age of fourteen (14) years and the actor is under the age of twenty (20) years, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.

(2) The actor may be guilty, however, of the lesser offense defined by the age that he or she reasonably believed the child to be.

(d)(1) When criminality of conduct depends on a child's being below a critical age older than fourteen (14) years, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.

(2) The actor may be guilty, however, of the lesser offense defined by the age that he or she reasonably believed the child to be.

(e) When criminality of conduct depends on a victim's being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent.

History. Acts 1975, No. 280, § 1802; 1985, No. 281, § 1; 1985, No. 870, § 4; 1985, No. 919, § 1; A.S.A. 1947, § 41-1802; Acts 2003, No. 1323, § 2.

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

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

(1) Being eighteen (18) years old or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in sexual intercourse, deviate sexual activity, or sexual contact; or

(2)(A) With the purpose to arouse or gratify the sexual desires of himself or herself or those of any other person, the person purposefully exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense if the person is within three (3) years of age of the victim.

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

History. Acts 1975, No. 280, § 1810; A.S.A. 1947, § 41-1810; Acts 1995, No. 550, § 1; 2001, No. 1821, § 1.

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

(a) A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, who is less than eighteen (18) years of age and:

(1)(A) The actor is employed with:

(i) The Department of Correction;

(ii) The Department of Community Correction;

(iii) The Department of Human Services;

(iv) Any city or county jail; or

(v) A juvenile detention facility; and

(B) The victim is in the custody of:

- (B)(i)(a) The Department of Correction;
- (b) The Department of Community Correction;
- (c) The Department of Human Services;
- (d) Any city or county jail; or
- (e) A juvenile detention facility; or

(ii) Their contractors or agents;

(2) Is a professional under § 12-12-507(b) and is in a position of trust or authority over the victim and uses the position to engage in sexual intercourse or deviate sexual activity; or

(3)(A) Is an employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim.

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

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

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

History. Acts 2001, No. 1738, § 2; 2003, No. 1391, § 1; 2003, No. 1469, § 2.

5-14-125. Sexual assault in the second degree.

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

(1) Engages in sexual contact with another person by forcible compulsion;

(2) Engages in sexual contact with another person who is incapable of consent because the person is physically helpless, mentally defective, or mentally incapacitated;

(3) Being eighteen (18) years of age or older, engages in sexual contact with another person, not the person's spouse, who is less than fourteen (14) years of age;

(4)(A) Engages in sexual contact with another person who is less than eighteen (18) years of age and the person:

(i) Is employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the person;

(ii) Is a professional under § 12-12-507(b) and is in a position of trust or authority over the minor; or

(iii) Is the minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.

(B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to prosecution;

(5)(A) Being less than eighteen (18) years of age, engages in sexual contact with a person, not his or her spouse, who is less than fourteen (14) years of age.

(B)(i) It is an affirmative defense to prosecution under subdivision (a)(5)(A) of this section that the person was not more than three (3) years older than the victim if the victim is less than twelve (12) years of age.

(ii) It is an affirmative defense to prosecution under subdivision (a)(5)(A) of this section that the person was not more than four (4) years older than the victim if the victim is twelve (12) years of age or older; or

(6) Is a teacher in a public school in grades kindergarten through twelve (K-12) and engages in sexual contact with another person who is a student enrolled in the school and who is less than twenty-one (21) years of age.

(b)(1) Sexual assault in the second degree is a Class B felony.

(2) Sexual assault in the second degree is a Class D felony if committed by a person less than eighteen (18) years of age with a person, not the person's spouse, who is less than fourteen (14) years of age.

History. Acts 2001, No. 1738, § 3; 2003, No. 1323, § 1; 2003, No. 1720, § 2.

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

(a)(1) A person commits sexual assault in the third degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, and the person:

(A) Is employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or

(B) Is a professional under § 12-12-507(b) or a member of the clergy and is in a position of trust or authority over the victim and uses the position to engage in sexual intercourse or deviate sexual activity.

(2)(A) A person commits sexual assault in the third degree if the person being under eighteen (18) years of age engages in sexual intercourse or deviate sexual activity with another person not the person's spouse who is less than fourteen (14) years of age.

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

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

(c) Sexual assault in the third degree is a Class C felony.

History. Acts 2001, No. 1738, § 4; 2003, No. 1324, § 1.

5-14-127. Sexual assault in the fourth degree.

(a) A person commits sexual assault in the fourth degree if, being twenty (20) years of age or older, the person engages in:

(1) Sexual intercourse with another person, not the person's spouse, who is less than sixteen (16) years of age; or

(2) Deviate sexual activity with another person, not the person's spouse, who is less than sixteen (16) years of age; or

(3) The person engages in sexual contact with another person, not the person's spouse, who is less than sixteen (16) years of age.

(b)(1) Sexual assault in the fourth degree under subdivisions (a)(1) and (2) of this section is a Class D felony.

(2) Sexual assault in the fourth degree under subdivision (a)(3) of this section is a Class A misdemeanor if the person engages only in sexual contact with another person as described in subdivision (a)(3) of this section.

History. Acts 2001, No. 1738, § 5; 2003, No. 1325, § 1.

5-14-128. Registered offender living near school or daycare prohibited.

(a) It shall be unlawful for a sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who has been assessed as a Level 3 or Level 4 offender to reside within two thousand feet (2,000') of the property on which any public or private elementary or secondary school or daycare facility is located.

(b)(1) It shall not be a violation of this section if the property on which the sex offender resides is owned and occupied by the offender and was purchased prior to the date on which the school or daycare center was established.

(2) The exclusion in subsection (b)(1) of this section shall not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after the school or daycare center is established.

(c)(1) It shall not be a violation of this section if the sex offender resides on property he or she owns prior to July 16, 2003.

(2) The exclusion in subsection (c)(1) of this section shall not apply to a sex offender who pleads guilty or nolo contendere to or is found guilty of another sex offense after July 16, 2003.

(d) A sex offender who is required to register under the Sex Offender Registration Act of 1997, § 12-12-901 et seq., and who knowingly violates the provisions of this section shall be guilty of a Class D felony.

History. Acts 2003, No. 330, § 3.
