State of Arkansas
84th General Assembly
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A Bill

Act 1087 of 2003
SENATE BILL 416

By: Senators Gullett, Salmon, Whitaker, Luker, Capps, Glover, Holt, G. Jeffress, Trusty

For An Act To Be Entitled
AN ACT CONCERNING COMPUTER CRIMES; AND FOR OTHER PURPOSES.

Subtitle
AN ACT CONCERNING COMPUTER CRIMES.

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

SECTION 1. Arkansas Code § 5-27-303 is amended to read as follows:
5-27-303. Engaging children in sexually explicit conduct for use in visual or print medium.
(a) Any person who employs, uses, persuades, induces, entices, or coerces any child to engage in, or who has a child assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be guilty of a Class C felony for the first offense and a Class B felony for subsequent offenses.
(b) Any parent, legal guardian, or person having custody or control of a child who knowingly permits such child to engage in, or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct shall be guilty of a Class C felony for the first offense and a Class B felony for subsequent offenses.

SECTION 2. Arkansas Code § 5-27-601, concerning definitions for computer crimes against minors, is amended by adding additional subdivisions to read as follows:
(13) “Electronic mail” means an electronic message, file, data,
or other information that is transmitted:

(A) Between two (2) or more computers, computer networks, or electronic terminals; or

(B) Within or between computer networks;

(14) “Electronic mail service provider” means a person who:

(A) Is an intermediary in the transmission of electronic mail from the sender to the recipient; or

(B) Provides to end users of electronic mail service the ability to send and receive electronic mail; and

(15) “Interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and also the systems operated or services offered by libraries or educational institutions.

SECTION 3. Arkansas Code § 5-27-602(a), concerning distributing, possessing, or viewing matter depicting sexually explicit conduct involving a child, is amended to read as follows:

(a) A person commits distributing, possessing, or viewing of matter depicting sexually explicit conduct involving a child if the person:

(1) Knowingly receives for the purpose of selling or knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers, or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, computer-generated image, video game, or any other reproduction or reconstruction which depicts a child or incorporates the image of a child engaging in sexually explicit conduct; or

(2) Knowingly possesses or views through any means, including on the Internet, any photograph, film, videotape, computer program or file, computer-generated image, video game, or any other reproduction, which depicts a child or incorporates the image of a child engaging in sexually explicit conduct.

SECTION 4. Arkansas Code § 5-27-605 is amended to read as follows:

(a)(1) A person commits computer exploitation of a child in the first degree if the person causes or permits a child to engage in sexually explicit conduct if the person knows, has reason to know, or intends that the prohibited conduct may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance.

(2)(A) Computer exploitation of a child in the first degree is a Class C felony for the first offense.

(B) Computer exploitation of a child in the first degree is a Class B felony for the second and subsequent offenses.

(3) Computer exploitation of a child in the first degree shall be a Class B felony if the person is the parent, guardian, or other person legally charged with the care or custody of the child.

(b)(1) A person commits computer exploitation of a child in the second degree, if the person photographs or films a child engaged in sexually explicit conduct or uses any device, including a computer, to reproduce or reconstruct the image of a child engaged in sexually explicit conduct.

(2) Computer exploitation of a child in the second degree is a Class D felony.

SECTION 5. Arkansas Code Title 5, Chapter 27, Subchapter 6 is amended by adding an additional section to read as follows:

5-27-608. Applicability of this subchapter to interactive computer service and electronic mail service providers.

An interactive computer service or electronic mail service provider does not violate this subchapter when the interactive computer service or electronic mail service provider is an intermediary between the sender and the recipient in the transmission of an electronic mail that violates this subchapter.

SECTION 6. Arkansas Code Title 5, Chapter 41, Subchapter 1 is amended by adding an additional section to read as follows:


An Internet service provider shall disclose personally identifiable information concerning a consumer pursuant to a subpoena, warrant, or court order.
order issued under authority of a law of this state, another state, or the
United States government.

SECTION 7. Arkansas Code § 5-60-120, concerning interception and
recording, is amended to add additional subsections to read as follows:
(f) Consistent with the provisions of 18 U.S.C. § 2703, as it existed
on January 1, 2003, the issuance of a court order for disclosure of customer
communications or records to a governmental entity requiring the information
as part of an ongoing criminal investigation is not prohibited by the laws of
this state.
(g) Consistent with the provisions of 18 U.S.C. §§ 3122-3127, as it
existed on January 1, 2003, the issuance of a court order authorizing or
approving the installation and use of a pen register or a trap-and-trace
device as part of an ongoing criminal investigation is not prohibited by the
laws of this state.

SECTION 8. Arkansas Code § 5-1-109(h), concerning statutes of
limitations, is amended to add additional subdivisions as follows:
(15) Computer child pornography, § 5-27-603; and
(16) Computer exploitation of a child in the first degree, § 5-
27-605.

SECTION 9. Arkansas Code § 6-17-410(c), concerning teacher licensure,
is amended to add additional subdivisions to read as follows:
(30) Computer child pornography, § 5-27-603; and
(31) Computer exploitation of a child in the first degree, § 5-
27-605.

SECTION 10. Arkansas Code § 6-17-414(b)(1), concerning criminal
records checks as a condition for initial employment of noncertified
personnel, is amended to add additional subdivisions as follows:
(DD) Computer child pornography, § 5-27-603; and
(EE) Computer exploitation of a child in the first degree,
§ 5-27-605.

SECTION 11. Arkansas Code § 9-28-409(e)(1), concerning criminal record
and child maltreatment checks, is amended to add additional subdivisions as follows:

(BB) Computer child pornography as prohibited in § 5-27-603; and

(CC) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

SECTION 12. Arkansas Code § 12-12-1103(10), concerning deoxyribonucleic acid (DNA) detection of sexual and violent offenders, is amended to add additional subdivisions as follows:

(xviii) Computer child pornography — § 5-27-603; and

(xix) Computer exploitation of a child in the first degree — § 5-27-605.

SECTION 13. Arkansas Code § 16-90-1101(6), concerning the rights of crime victims, is amended to add additional subdivisions as follows:

(U) Computer child pornography, § 5-27-603; and

(V) Computer exploitation of a child in the first degree, § 5-27-605.

SECTION 14. Arkansas Code § 17-27-313(f), concerning criminal background checks for counselors, is amended to add additional subdivisions as follows:

(33) Computer child pornography, as prohibited in § 5-27-603; and

(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 15. Arkansas Code § 17-87-312(f), concerning criminal background checks for nursing licenses, is amended to add additional subdivisions as follows:

(33) Computer child pornography, as prohibited in § 5-27-603; and

(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.
SECTION 16. Arkansas Code § 17-97-312(f), concerning criminal background checks for licensed psychologists, is amended to add additional subdivisions as follows:

(33) Computer child pornography, as prohibited in § 5-27-603; and

(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 17. Arkansas Code § 17-103-307(f), concerning criminal background checks for licensed social workers, is amended to add additional subdivisions as follows:

(33) Computer child pornography, as prohibited in § 5-27-603; and

(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 18. Arkansas Code § 20-13-1106(b), concerning criminal records checks for emergency medical technicians, is amended to add additional subdivisions as follows:

(36) Computer child pornography as prohibited in § 5-27-603; and

(37) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

SECTION 19. Arkansas Code § 20-33-205(b), concerning criminal records checks for persons providing care for the elderly, is amended to add additional subdivisions as follows:

(36) Computer child pornography, as prohibited in § 5-27-603; and

(37) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 20. Arkansas Code § 20-48-804(b), concerning criminal records checks for employees of providers of care to disabled adults, is amended to add additional subdivisions as follows:

(36) Computer child pornography, as prohibited in § 5-27-603; and
(37) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 21. Arkansas Code § 20-78-604(a), concerning qualifications for child care ownership, operation, or employment, is amended to add additional subdivisions as follows:

(31) Computer child pornography as prohibited in § 5-27-603; and
(32) Computer exploitation of a child in the first degree as prohibited in § 5-27-605.

SECTION 22. Arkansas Code § 21-15-102(f), concerning positions involving direct contact with children and with mentally ill and developmentally disabled persons, is amended to add additional subdivisions as follows:

(33) Computer child pornography, as prohibited in § 5-27-603; and
(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 23. Arkansas Code § 21-15-103(g), concerning the discharge of certain state employees, is amended to add additional subdivisions as follows:

(33) Computer child pornography, as prohibited in § 5-27-603; and
(34) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 24. Arkansas Code § 21-15-104(c), concerning certain background check offenses which may not be waived, is amended to add additional subdivisions as follows:

(12) Computer child pornography, as prohibited in § 5-27-603; and
(13) Computer exploitation of a child in the first degree, as prohibited in § 5-27-605.

SECTION 25. Arkansas Code § 5-36-303 is amended to read as follows:
5-36-303. Theft of wireless service.
   (a) A person commits the offense of theft of wireless service if he or she intentionally obtains wireless service by the use of an unlawful wireless device or without the consent of the wireless service provider.
   (b) Theft of wireless service is a Class A misdemeanor when the aggregate value of service obtained is five hundred dollars ($500) or less, and a Class C felony when the aggregate value of service obtained is more than five hundred dollars ($500) but less than twenty-five hundred dollars ($2500). If the aggregate value of service is twenty-five hundred dollars ($2500) or more, or if the conviction is for a second or subsequent offense, or if the person convicted of the offense has been previously convicted of any similar crime in this or any other state or federal jurisdiction, theft of wireless service is a Class B felony.
   (c) Theft of wireless service is a Class C felony if the stolen service is used to communicate threats of damage or injury by bombing, fire or other means, in a manner likely to place another person in reasonable apprehension of physical injury to himself or another or of damage to his or her property or to the property of another or to create a public alarm.

   /s/ Gullett

   APPROVED: 4/4/2003