



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1376
Sponsored by Representative Bell**

Subtitle TO AMEND THE DEFINITION OF “PERSON” IN THE ARKANSAS CRIMINAL CODE; TO PROVIDE THAT ASSAULT AND BATTERY OFFENSES AGAINST A PERSON CAN BE COMMITTED AGAINST AN UNBORN CHILD.

Impact Summary¹ Undetermined.

Change from current law² Amends Arkansas Code Annotated § 5-1-102(13)(B)(i)(a) by applying the existing definition of “person” to crimes found in A.C.A § 5-13-201 et seq., including Battery in the first degree, Battery in the second degree, Battery in the third degree, Aggravated assault, Assault in the first degree, Assault in the second degree, Assault in the third degree, Coercion, Abuse of athletic contest officials, Introduction of controlled substance into the body of another, and Aggravated assault upon a certified law enforcement officer or an employee of a correctional facility.

A.C.A § 5-1-102 (13)(B)(i)(a) defines “person” to include an unborn child in utero at any stage of development. Currently, this definition is only applicable to homicide offenses.

Impact Information

While the proposed bill would apply the definition of “person” to Battery in the first degree, A.C.A. § 5-13-201, it is important to note that this particular code provision already contains a provision which criminalizes purposefully causing injury to an unborn child. See attached code provision.

Data does not exist as to how often a person could have been charged with other Battery or Assault provisions under this proposed bill.

¹ This impact assessment was prepared (2/19/15 at 8:02 a.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

The following information is only in reference to A.C.A. § 5-13-210, Introduction of a controlled substance into the body of another.

The Department of Human Services publishes a report containing information on (1) infants born with an illegal substance present in its body as a result of the pregnant mother knowingly using an illegal substance before the birth of the newborn or (2) the presence of an illegal substance in the mother's bodily fluids or bodily substances at the time of the baby's birth. For Fiscal Year 2014 (July 1, 2013-June 30, 2014), there were 867 women with referrals in this report, some testing positive for multiple drugs. Of these women:

1. There were 542 instances in which the mother was found to have used a drug classified as a Schedule IV, V, or VI during pregnancy, which could have resulted in a Class C felony charge under this proposed bill.
2. There were 182 instances in which the mother was found to have used a drug classified as a Schedule I, II, or III non-narcotic during pregnancy, which could have resulted in a Class B felony charge under this proposed bill.
3. There were 183 instances in which the mother was found to have used a drug classified as a Schedule I or II narcotic or methamphetamine during pregnancy, which could have resulted in a Class Y felony charge under this proposed bill.

While a substantiated referral did not result in the removal of the child from the home in all cases, this does indicate a large pool of offenders eligible to be charged under this proposed bill.

The Arkansas Department of Corrections (ADC) reports five (5) inmates currently serving a sentence for violation of A.C.A. § 5-13-210, Introduction of a controlled substance into the body of another, Class C felony. ADC reports seven (7) inmates currently serving a sentence for violation of A.C.A. § 5-13-210, Introduction of a controlled substance into the body of another, Class B felony. ADC reports seven (7) inmates currently serving a sentence for violation of A.C.A. § 5-13-210, Introduction of a controlled substance into the body of another, Class Y felony.

A.C.A. § 5-1-102. Definitions.

As used in the Arkansas Criminal Code:

- (1) "Act" or "action" means the same as defined in § 5-2-201;
- (2) "Actor" includes, when appropriate, a person who possesses something or who omits to act;
- (3) "Conduct" means the same as defined in § 5-2-201;
- (4) "Deadly weapon" means:

(A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

(B) Anything that in the manner of its use or intended use is capable of causing death or serious physical injury;

(5) "Element of the offense" means the conduct, the attendant circumstances, or the result of conduct that:

- (A) Is specified in the definition of the offense;
- (B) Establishes the kind of culpable mental state required for commission of the offense; or
- (C) Negates an excuse or justification for the conduct;

(6) (A) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.

(B) "Firearm" includes:

(i) A device described in subdivision (6)(A) of this section that is not loaded or lacks a clip or another component to render it immediately operable; and

(ii) Components that can readily be assembled into a device described in subdivision (6)(A) of this section;

(7) "Included offense" means the same as defined in § 5-1-110(b);

(8) (A) "Knowingly" or an equivalent term such as "knowing", "with knowledge", "willful", or "willfully" means the same as knowingly as defined in § 5-2-202.

(B) However, if the statute clearly indicates a legislative intent to require a culpable mental state of "purposely", "willful" or "willfully" means the same as "purposely" defined in § 5-2-202;

(9) "Law" includes a statute or court decision;

(10) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make an arrest for an offense;

(11) "Negligently" or an equivalent term such as "negligence" or "with negligence" means the same as defined in § 5-2-202;

(12) "Omission" or "omit to act" means the same as defined in § 5-2-201;

(13) (A) "Person", "actor", "defendant", "he", "she", "her", or "him" includes:

(i) Any natural person; and

(ii) When appropriate, an organization as defined in § 5-2-501.

(B) (i) (a) As used in §§ 5-10-101 -- 5-10-105, "person" also includes an unborn child in utero at any stage of development.

(b) "Unborn child" means offspring of human beings from conception until birth.

(ii) This subdivision (13)(B) does not apply to:

(a) An act that causes the death of an unborn child in utero if the act was committed during a legal abortion to which the woman consented, including an abortion performed to remove an ectopic pregnancy or other nonviable pregnancy when the embryo is not going to develop further;

(b) An act that is committed pursuant to a usual and customary standard of medical practice during diagnostic testing or therapeutic treatment;

(c) An act that is committed in the course of medical research, experimental medicine, or an act deemed necessary to save the life or preserve the health of the woman;

(d) Assisted reproduction technology activity, procedure, or treatment; or

(e) An act occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization.

(iii) Nothing in this subdivision (13)(B) shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero;

(14) "Physical injury" means the:

(A) Impairment of physical condition;

(B) Infliction of substantial pain; or

(C) Infliction of bruising, swelling, or a visible mark associated with physical trauma;

(15) "Possess" means to exercise actual dominion, control, or management over a tangible object;

(16) "Public servant" means any:

(A) Officer or employee of this state or of any political subdivision of this state;

(B) Person exercising a function of any officer or employee of this state or any political subdivision of this state;

(C) (i) Person acting as an adviser, consultant, or otherwise in performing any governmental function.

(ii) However, this subdivision (16)(C) does not include a witness; or

(D) Person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position;

(17) "Purposely" or an equivalent term such as "purpose", "with purpose", "intentional", "intentionally", "intended", or "with intent to" means the same as purposely as defined in § 5-2-202;

(18) "Reasonably believes" or "reasonable belief" means a belief:

(A) That an ordinary and prudent person would form under the circumstances in question; and

(B) Not recklessly or negligently formed;

(19) "Sawed-off or short-barreled rifle" means:

(A) A rifle having one (1) or more barrels less than sixteen inches (16") in length; or

(B) Any weapon made from a rifle, whether by alteration, modification, or otherwise, if the weapon, as modified, has an overall length of less than twenty-six inches (26");

(20) "Sawed-off or short-barreled shotgun" means:

(A) A shotgun having one (1) or more barrels less than eighteen inches (18") in length; or

(B) Any weapon made from a shotgun, whether by alteration, modification, or otherwise, if the weapon, as modified, has an overall length of less than twenty-six inches (26");

(21) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ; and

(22) "Statute" includes the Arkansas Constitution and any statute of this state, any ordinance of a political subdivision of this state, and any rule or regulation lawfully adopted by an agency of this state.

HISTORY: Acts 1975, No. 280, § 115; A.S.A. 1947, § 41-115; Acts 1994 (2nd Ex. Sess.), No. 45, § 2; 1999, No. 1273, §§ 1-3; 1999, No. 1476, § 1; 2005, No. 1994, § 442; 2007, No. 827, § 11; 2013, No. 1032, § 1.

A.C.A. § 5-13-201. Battery in the first degree.

(a) A person commits battery in the first degree if:

(1) With the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon;

(2) With the purpose of seriously and permanently disfiguring another person or of destroying, amputating, or permanently disabling a member or organ of that other person's body, the person causes such an injury to any person;

(3) The person causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life;

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

(A) The person commits or attempts to commit a felony; and

(B) In the course of and in furtherance of the felony or in immediate flight from the felony:

(i) The person or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life; or

(ii) Another person who is resisting the felony or flight causes serious physical injury to any person;

(5) With the purpose of causing serious physical injury to an unborn child or to a woman who is pregnant with an unborn child, the person causes serious physical injury to the unborn child;

(6) The person knowingly causes physical injury to a pregnant woman in the commission of a felony or a Class A misdemeanor, and in so doing, causes serious physical injury to the pregnant woman's unborn child, and the unborn child is subsequently born alive;

(7) The person knowingly, without legal justification, causes serious physical injury to a person he or she knows to be twelve (12) years of age or younger;

(8) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a firearm; or

(9) The person knowingly causes serious physical injury to any person four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life.

(b) It is an affirmative defense in any prosecution under subdivision (a)(4) of this section in which the defendant was not the only participant that the defendant:

(1) Did not commit the battery or in any way solicit, command, induce, procure, counsel, or aid the battery's commission;

(2) Was not armed with a deadly weapon;

(3) Reasonably believed that no other participant was armed with a deadly weapon; and

(4) Reasonably believed that no other participant intended to engage in conduct that could result in serious physical injury.

(c) (1) Except as provided in subdivisions (c)(2) and (3) of this section, battery in the first degree is a Class B felony.

(2) Battery in the first degree is a Class Y felony under the circumstances described in subdivision (a)(9) of this section.

(3) Battery in the first degree is a Class Y felony if the injured person is a law enforcement officer acting in the line of duty.

HISTORY: Acts 1975, No. 280, § 1601; A.S.A. 1947, § 41-1601; Acts 1987, No. 482, § 1; 1995, No. 360, § 1; 1995, No. 1305, § 1; 2005, No. 1994, § 474; 2007, No. 622, § 1; 2007, No. 709, §2; 2007, No. 827, § 26.

A.C.A. § 5-13-202. Battery in the second degree.

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

(1) With the purpose of causing physical injury to another person, the person causes serious physical injury to another person;

(2) With the purpose of causing physical injury to another person, the person causes physical injury to another person by means of a deadly weapon other than a firearm;

(3) The person recklessly causes serious physical injury to another person:

(A) By means of a deadly weapon; or

(B) While operating or in actual physical control of a motor vehicle if at the time:

(i) The person is intoxicated; or

(ii) The alcohol concentration in the person's breath or blood is eight-hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204; or

(4) The person knowingly, without legal justification, causes physical injury to or incapacitates a person he or she knows to be:

(A) (i) A law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility while the law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility is acting in the line of duty.

(ii) As used in this subdivision (a)(4)(A):

(a) (1) "Code enforcement officer" means an individual charged with the duty of enforcing a municipal code, municipal ordinance, or municipal regulation as defined by a municipal code, municipal ordinance, or municipal regulation.

(2) "Code enforcement officer" includes a municipal animal control officer; and

(b) "Employee of a correctional facility" includes a person working under a professional services contract with the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services;

(B) A teacher or other school employee while acting in the course of employment;

(C) An individual sixty (60) years of age or older or twelve (12) years of age or younger;

(D) An officer or employee of the state while the officer or employee of the state is acting in the performance of his or her lawful duty;

(E) While performing medical treatment or emergency medical services or while in the course of other employment relating to his or her medical training:

(i) A physician;

(ii) A person licensed as emergency medical services personnel, as defined in § 20-13-202;

(iii) A licensed or certified health care professional; or

(iv) Any other health care provider; or

(F) An individual who is incompetent, as defined in § 5-25-101.

(b) Battery in the second degree is a Class D felony.

A.C.A. § 5-13-203. Battery in the third degree.

(a) A person commits battery in the third degree if:

- (1) With the purpose of causing physical injury to another person, the person causes physical injury to any person;
- (2) The person recklessly causes physical injury to another person;
- (3) The person negligently causes physical injury to another person by means of a deadly weapon; or
- (4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance.

(b) Battery in the third degree is a Class A misdemeanor.

A.C.A. § 5-13-204. Aggravated assault.

(a) A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:

- (1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person;
- (2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person; or
- (3) Impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.

(b) Aggravated assault is a Class D felony.

(c) The provisions of this section do not apply to:

- (1) A law enforcement officer acting within the scope of his or her duty; or
- (2) A person acting in self-defense or the defense of a third party.

HISTORY: Acts 1975, No. 280, § 1604; A.S.A. 1947, § 41-1604; Acts 2003, No. 1113, § 1; 2009, No. 332, § 1.

A.C.A. § 5-13-205. Assault in the first degree.

(a) A person commits assault in the first degree if he or she:

(1) Recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person; or

(2) Purposely impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.

(b) Assault in the first degree is a Class A misdemeanor.

(c) It is a defense to prosecution under subdivision (a)(2) of this section if the other person consented to the impeding or prevention of his or her respiration or circulation of blood.

HISTORY: Acts 1975, No. 280, § 1605; A.S.A. 1947, § 41-1605; Acts 2009, No. 332, § 2.

A.C.A. § 5-13-206. Assault in the second degree.

(a) A person commits assault in the second degree if he or she recklessly engages in conduct that creates a substantial risk of physical injury to another person.

(b) Assault in the second degree is a Class B misdemeanor.

HISTORY: Acts 1975, No. 280, § 1606; A.S.A. 1947, § 41-1606.

A.C.A. § 5-13-207. Assault in the third degree.

(a) A person commits assault in the third degree if he or she purposely creates apprehension of imminent physical injury in another person.

(b) Assault in the third degree is a Class C misdemeanor.

HISTORY: Acts 1975, No. 280, § 1607; A.S.A. 1947, § 41-1607.

A.C.A. § 5-13-208. Coercion.

(a) A person commits coercion if he or she compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by purposeful conduct designed to instill in the other person a fear that, if a demand is not complied with, the actor or another person will:

(1) Cause physical injury to any person;

(2) Cause damage to property;

(3) Subject any person to physical confinement;

(4) Accuse any person of an offense or cause criminal proceedings to be instituted against any

person; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule.

(b) Coercion is a Class A misdemeanor.

HISTORY: Acts 1975, No. 280, § 1609; A.S.A. 1947, § 41-1609.

A.C.A. § 5-13-209. Abuse of athletic contest officials.

(a) A person commits abuse of an athletic official if, with the purpose of causing physical injury to another person, the person strikes or otherwise physically abuses an athletic contest official immediately prior to, during, or immediately following an interscholastic, intercollegiate, or any other organized amateur or professional athletic contest in which the athletic contest official is participating.

(b) Abuse of an athletic official is a Class A misdemeanor.

HISTORY: Acts 1987, No. 355, § 1; 2007, No. 827, § 28.

A.C.A. § 5-13-210. Introduction of controlled substance into body of another person.

(a) It is unlawful for any person to inject any controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq., into the human body of another person, unless the controlled substance has been ordered for the person receiving the controlled substance by a licensed practitioner, licensed by the state to prescribe controlled substances in the schedule involved and this being for a legitimate medical purpose.

(b) It is unlawful for any person to administer or cause to be ingested, inhaled, or otherwise introduced into the human body of another person a controlled substance as defined by the Uniform Controlled Substances Act, § 5-64-101 et seq., unless the controlled substance has been ordered for the person receiving the controlled substance by a licensed practitioner, licensed by the state to prescribe controlled substances in the schedule involved and this being for a legitimate medical purpose.

(c) Any person who violates this section with respect to:

(1) A controlled substance in Schedule I or Schedule II, which is a narcotic drug, is guilty of a Class Y felony;

(2) Any other controlled substance in Schedule I, Schedule II, or Schedule III is guilty of a Class B felony; or

(3) Any other controlled substance in Schedule IV, Schedule V, or Schedule VI is guilty of a Class C felony.

(d) The provisions of this section and any criminal penalty provided for in this section are in addition to any other criminal penalty a person may be subjected to under a provision of the Arkansas Criminal Code or the Uniform Controlled Substances Act, § 5-64-101 et seq.

(e) It is not a defense under a provision of this section that a person:

(1) Consented to being injected with the controlled substance; or

(2) Ingested, inhaled, or otherwise introduced the controlled substance into his or her human body knowingly and voluntarily.

(f) Notwithstanding a provision of subsection (c) of this section, any person is guilty of a Class Y felony who violates this section by introducing a controlled substance into the body of another person without that other person's knowledge or consent with the purpose of:

(1) Committing any felony sexual offense, as defined in Arkansas law;

(2) Engaging in any unlawful sexual act, as defined in § 5-14-101 et seq.;

(3) Engaging in any unlawful sexual contact, as defined in § 5-14-101; or

(4) Engaging in any act involving a child engaging in sexually explicit conduct, as defined in § 5-27-302.

HISTORY: Acts 1987, No. 848, §§ 1-3; 1999, No. 516, § 1.

A.C.A. § 5-13-211. Aggravated assault upon a certified law enforcement officer or an employee of a correctional facility.

(a) A person commits aggravated assault upon a certified law enforcement officer or an employee of a correctional facility if, under circumstances manifesting extreme indifference to the personal hygiene of the certified law enforcement officer or employee of the correctional facility, the person purposely engages in conduct that creates a potential danger of infection to the certified law enforcement officer or an employee of any state or local correctional facility while the certified law enforcement officer or employee of the state or local correctional facility is engaged in the course of his or her employment by causing a person whom the actor knows to be a certified law enforcement officer or employee of the state or local correctional facility to come into contact with saliva, blood, urine, feces, seminal fluid, or other bodily fluid by purposely throwing, tossing, expelling, or otherwise transferring the fluid or material.

(b) Aggravated assault upon a certified law enforcement officer or an employee of a correctional facility is a Class D felony.

HISTORY: Acts 1997, No. 1235, § 1; 2003, No. 1271, § 1; 2011, No. 277, § 1.