



*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 Cannot be determined.

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 § 5-13-210, Introduction of controlled substance into the body of another person. See attached code provision.

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

The following information is for reference only. 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.

¹ This impact assessment was prepared (3/23/15 at 3:14 p.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

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 Correction (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. § 5-13-210. 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.