



Arkansas  
Sentencing  
Commission

**Impact Assessment for HB1454  
Sponsored by Representative A. Collins  
and Senator Bond**

**Subtitle** CONCERNING WITNESS, INFORMANT, AND JURY TAMPERING OR INTIMIDATION;  
AND CONCERNING EVIDENCE TAMPERING.

**Impact Summary**<sup>1</sup> Cannot be determined.

**Change from current law**<sup>2</sup> Amends Arkansas Code Annotated § 5-53-109, Intimidating a witness, to require that the offense be committed *knowingly* and to increase the penalty in some circumstances. Currently, the statute is silent as to the intent required for committing the offense and the penalty for intimidating a witness is a Class C felony. Under the proposed bill, the penalty for intimidating a witness is one (1) felony classification lower than the underlying offense for which the witness or person believed to be called as a witness is to be a witness if the offense is a Class B felony or higher felony offense of Homicide (A.C.A. § 5-10-101 et seq.), an attempted homicide, or Rape (A.C.A. § 5-14-103). If otherwise committed, intimidating a witness remains a Class C felony under the proposed bill.

Amends A.C.A. § 5-53-110, Tampering, to require that the offense be committed *knowingly* and to increase the penalty in some circumstances. Currently, the statute is silent as to the intent required for committing the offense and the penalty for tampering is a Class A misdemeanor. Under the proposed bill, tampering is a Class C felony if the person impairs or obstructs the investigation of a felony offense. If otherwise committed, tampering remains a Class A misdemeanor under the proposed bill.

Amends A.C.A. § 5-53-111, Tampering with physical evidence, to require that the offense be committed *knowingly* and to increase the penalty. Currently, the statute is silent as to the intent required for committing the offense and the penalty for tampering with physical evidence is a Class D felony if the person impairs or obstructs the prosecution or defense of a felony, or a Class B misdemeanor if otherwise committed. Under the proposed bill, tampering with physical evidence is a Class C felony if the person impairs or obstructs the prosecution or defense of a felony, or a Class A misdemeanor if otherwise committed.

Amends A.C.A. § 5-53-112, Retaliation against a witness, informant, or juror, to require that the offense be committed *knowingly* and to increase the penalty from a Class D felony to a Class C felony.

<sup>1</sup> This impact assessment was prepared (02/27/2019, 12:51 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.

<sup>2</sup> Standard punishment ranges:

Class Y 10-40 years or life

Class A 6-30 years; up to \$15,000

Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000

Class D 0-6 years; up to \$10,000

Unclassified As specified in statute

Misdemeanors

Class A Up to 1 year; up to \$2,500

Class B Up to 90 days; up to \$1,000

Class C Up to 30 days; up to \$500

Amends A.C.A. § 5-53-115, Jury tampering, to require that the offense be committed *knowingly* and to increase the penalty from a Class D felony to a Class C felony.

The proposed bill also relocates the definition of “informant” when used in offenses relating to judicial and other official proceedings and makes other technical corrections.

### **Impact Information**

The proposed bill increases the required intent for various criminal offenses, while simultaneously raising penalties for most occurrences of the amended offenses. (See attached for full text of current statutes.) Available data does not distinguish when an offense was committed knowingly. Further, data on convictions for intimidating a witness does not indicate what offense the victim was believed to have witnessed. Finally, data on convictions for tampering does not indicate whether the offender impaired or obstructed the prosecution or defense of a felony. For these reasons, the impact of this proposed bill cannot be determined. The following data is for informational purposes only.

An examination of the Arkansas Department of Correction intake file for the one-year period beginning January 1, 2017 and ending December 31, 2017 revealed fifteen (15) inmates serving a term of incarceration for which A.C.A. § 5-53-111, Tampering with physical evidence, was the most serious offense and one (1) inmate serving a term of incarceration for which A.C.A. § 5-53-112, Retaliation against a witness, informant, or juror, was the most serious offense. These sixteen (16) offenders would likely see an increased sentence length under this proposed bill. The small increase in maximum sentence length from a Class D felony to a Class C felony, coupled with good time and transfer eligibility, would result in a minimal increase in inmate cost of care for this portion of the proposed bill. However, due to the unavailability of data for other sections of this proposed bill, the full impact cannot be determined.

The Administrative Office of the Courts (AOC) reports the following conviction information for the three year period beginning January 1, 2015 and ending December 31, 2017 for these statutes as currently written:

<b>A.C.A §</b>	<b>Felony Convictions</b>
5-53-109 Intimidating a witness	23
5-53-110 Tampering	7
5-53-111 Tampering with physical evidence	288
5-53-112 Retaliation against a witness, informant, or juror	8
5-53-115 Jury tampering	0

**A.C.A § 5-53-109. Intimidating a witness.**

- (a) A person commits the offense of intimidating a witness if he or she threatens a witness or a person he or she believes may be called as a witness with the purpose of:
- (1) Influencing the testimony of that person;
  - (2) Inducing that person to avoid legal process summoning that person to testify; or
  - (3) Inducing that person to absent himself or herself from an official proceeding to which that person has been legally summoned.
- (b) Intimidating a witness is a Class C felony.

HISTORY: Acts 1975, No. 280, § 2609; A.S.A. 1947, § 41-2609.

**A.C.A § 5-53-110. Tampering.**

- (a) A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted, he or she induces or attempts to induce another person to:
- (1) Testify or inform falsely;
  - (2) Withhold any unprivileged testimony, information, document, or thing regardless of the admissibility under the rules of evidence of the testimony, information, document, or thing and notwithstanding the relevance or probative value of the testimony, information, document, or thing to an investigation;
  - (3) Elude legal process summoning that person to testify or supply evidence, regardless of whether the legal process was lawfully issued; or
  - (4) Absent himself or herself from any proceeding or investigation to which that person has been summoned.
- (b) Tampering is a Class A misdemeanor.

HISTORY: Acts 1975, No. 280, § 2610; A.S.A. 1947, § 41-2610; Acts 2007, No. 827, § 45.

**A.C.A § 5-53-111. Tampering with physical evidence.**

- (a) A person commits the offense of tampering with physical evidence if he or she alters, destroys, suppresses, removes, or conceals any record, document, or thing with the purpose of impairing its verity, legibility, or availability in any official proceeding or investigation.
- (b)
- (1) Tampering with physical evidence is a Class D felony if the person impairs or obstructs the prosecution or defense of a felony.
  - (2) Otherwise, tampering with physical evidence is a Class B misdemeanor.

HISTORY: Acts 1975, No. 280, § 2611; A.S.A. 1947, § 41-2611.

**A.C.A § 5-53-112. Retaliation against a witness, informant, or juror.**

- (a) A person commits the offense of retaliation against a witness, informant, or juror if he or she harms or threatens to harm another by any unlawful act in retaliation for anything lawfully done in the capacity of witness, informant, or juror.
- (b) Retaliation against a witness, informant, or juror is a Class D felony.
- (c) "Informant" means a person who provides information to any law enforcement agency in an effort to assist the law enforcement agency in solving a crime or apprehending a person suspected of a criminal offense.

HISTORY: Acts 1975, No. 280, § 2612; A.S.A. 1947, § 41-2612; Acts 1997, No. 1238, § 1; 2005, No. 1994, § 465.

**A.C.A § 5-53-115. Jury tampering.**

- (a) A person commits the offense of jury tampering if he or she attempts directly or indirectly to communicate with a juror, other than as a part of the official proceedings in which the juror is participating, with the purpose of influencing the juror's vote, decision, or other action as a juror.
- (b) Juror tampering is a Class D felony.

HISTORY: Acts 1975, No. 280, § 2615; A.S.A. 1947, § 41-2615.