



## ARKANSAS SENTENCING COMMISSION

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### **Impact Assessment for HB1508 Sponsored by Representative Brown**

**Subtitle** CONCERNING RIOT OFFENSES AND PUBLIC DEMONSTRATION OFFENSES; CONCERNING OFFENSES COMMITTED AGAINST FIRST RESPONDERS; CONCERNING PUBLIC AND PRIVATE PROPERTY OFFENSES; AND CONCERNING PROCEDURES UPON ARREST.

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill creates a new criminal offense for which the likely number of occurrences is unknown. For this reason, the projected impact of the proposed bill cannot be determined.

**Change from Current Law**<sup>2</sup> Amends various provisions of the Arkansas Code Annotated regarding criminal provisions related to criminal mischief and riots. Please note that while several code provisions are amended by this proposed bill, only those impacting felony penalties will be analyzed in this impact assessment.

The proposed bill amends A.C.A. § 5-13-203, Battery in the third degree, to create a new course of conduct by which a person can commit the offense of Battery in the third degree. Under the proposed bill, a person commits battery in the third degree if the person knowingly causes physical contact with a first responder that a reasonable person would regard as extremely offensive or provocative, including without limitation spitting, throwing, or otherwise transferring bodily fluids, pathogens, or human waste onto the person of a first responder. A person convicted of this conduct is guilty of a Class D felony if the defendant resides in another state and traveled to Arkansas with the purpose to commit the offense, or if otherwise committed, a Class A misdemeanor with a mandatory fine up to two thousand five hundred dollars (\$2,500) and a minimum sentence of at least thirty (30) days imprisonment for which the defendant is required to serve thirty (30) days before being released from imprisonment.

The proposed bill also creates A.C.A. § 5-13-212, Aggravated assault against a first responder. Under the proposed bill, a person commits aggravated assault against a first responder if: (1) The person knowingly causes physical contact with a first responder that a reasonable person would regard as extremely offensive or provocative, including without limitation spitting, throwing, or otherwise transferring bodily fluids, pathogens, or human waste onto the person of first responder, or by throwing an object such as a brick, rock, bottle, projectile, firework, chemical agent, or explosive device that a reasonable person knows or should know could cause physical injury if the object struck the first responder; (2) At the time of the physical contact, the first

<sup>1</sup> This impact assessment was prepared 3/29/2021 2:33 PM 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 Corrections 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

responder is discharging or attempting to discharge his or her official duties; and (3) The physical contact results in serious bodily injury to the first responder, results in the death of the first responder, involves the use or display of a deadly weapon, or involves strangulation or attempted strangulation. Aggravated assault against a first responder is a Class C felony with a mandatory sentence of at least ninety (90) days' imprisonment for which the defendant is required to serve at least ninety (90) days before being released from imprisonment.

The proposed bill amends A.C.A. § 5-71-201, Riot, to increase the penalty from a Class A misdemeanor to a Class D felony if the defendant resides in another state and traveled to Arkansas with the purpose to commit the offense. Under the proposed bill, a person convicted of riot shall be sentenced to a mandatory minimum sentence of thirty (30) days of imprisonment for which the defendant is required to serve at least thirty (30) days before being released from imprisonment.

The proposed bill amends A.C.A. § 5-71-202, Aggravated riot, by adding a mandatory minimum sentence of forty-five (45) days' imprisonment for a person convicted of aggravated riot. Under current law and the proposed bill, Aggravated riot is a Class D felony.

The proposed bill amends A.C.A. § 5-71-203, Inciting riot, to increase the penalty from a Class A misdemeanor to a Class D felony if the defendant resides in another state and travels to Arkansas with the purpose to commit the offense.

**Impact Information** The proposed bill increases penalties for current criminal offenses, creates mandatory terms of imprisonment and creates a new criminal offense for which the likely number of occurrences is unknown. Some criminal conduct provisions amended or created by this proposed bill may be charged under existing criminal penalties, however available data for these offenses does not sufficiently identify the victims or the circumstances surrounding the offense. [See attached for a complete reprint of relevant code section.] For this reason, the projected impact of the proposed bill cannot be determined. The following data is for informational purposes only.

The Administrative Office of the Courts reports that for the three (3) year period beginning January 1, 2017, and ending December 31, 2019, there were three (3) convictions for a violation of A.C.A. § 5-71-202, Aggravated riot, a Class D felony.

The Division of Correction reports one (1) inmate serving a term of incarceration for a violation of A.C.A. § 5-71-202, Aggravated riot, a Class D felony. This inmate is not serving a term of incarceration for which A.C.A. § 5-71-202 is the most serious offense.

**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 or motorboat 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 Division of Correction, the Division of Community Correction, or the Division of Youth 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 healthcare professional; or

(iv) Any other healthcare provider; or

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

(b)

(1) Battery in the second degree under subdivision (a)(3)(B) of this section is a Class C felony.

(2) Otherwise, battery in the second degree is a Class D felony

(c) As used in this section, "motorboat" means the same as defined in § 5-65-102.

**History**

Acts 1975, No. 280, § 1602; 1981, No. 877, § 1; 1983, No. 12, § 1; A.S.A. 1947, § 41-1602; Acts 1995, No. 1173, § 1; 1995, No. 1305, § 2; 1995, No. 1338, § 1; 1997, No. 207, § 1; 1997, No. 878, § 1; 1999, No. 389, § 1; 2003, No. 66, § 1; 2007, No. 827, § 27; 2009, No. 344, § 1; 2009, No. 689, § 1; 2011, No. 1120, § 6; 2011, No. 1168, § 1; 2013, No. 429, § 1; 2015, No. 104, §§ 1, 2; 2017, No. 333, § 1; 2019, No. 783, § 1; 2019, No. 910, § 667.

**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 chest, 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; 2019, No. 243, § 1.