



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1554
Sponsored by Representative Drown**

Subtitle CONCERNING PRIVATE REAL PROPERTY RIGHTS; TO PROTECT NATURAL RESOURCES, AGRICULTURAL RESOURCES, AND HISTORICAL ARTIFACTS; TO DETER CRIMINAL ACTIVITY ON A PERSON’S REAL PROPERTY; AND CONCERNING THE OFFENSE OF CRIMINAL TRESPASS.

Impact Summary¹ Cannot be determined.

Change from current law² Amends various Arkansas Code Annotated provisions related to Trespassing. This impact focuses on the provisions with criminal penalties.

The proposed bill amends Arkansas Code Annotated § 5-39-209, Criminal trespass to increase the penalty for certain courses of conduct.

- As currently written, a person commits the offense of criminal trespass if her or she purposely enters or remains unlawfully in or upon a vehicle or the premises of another person.
 - Criminal trespass is a Class B misdemeanor if the vehicle or premises involved is an occupiable structure, or the conduct involves the removal of a posted sign, fence, or portion of a fence.
 - All other criminal trespass constitutes a Class C misdemeanor.
- The proposed bill increases the penalty for certain courses of conduct constituting criminal trespass.
 - The bill proposes that criminal trespass is a Class D felony if the offender has two (2) or more prior convictions for a Class A misdemeanor violation of A.C.A. § 5-39-209 or § 5-39-305.
 - The bill proposes that criminal trespass if a Class A misdemeanor if:
 - the person commits criminal trespass while in possession of a killing device, a harvesting device, a device primarily used for the location and unearthing of artifacts, or a tool designed to gain entry into a structure by breaking a lock or breaking through a fence, or
 - the person commits criminal trespass on the premises of a commercial fishing or fish breeding operation while in possession of a fishing pole or net designed to catch fish, or
 - the person has a prior conviction under A.C.A § 5-39-203.
 - The conduct constituting a Class B misdemeanor remains the same.
 - All other criminal trespass constitutes a Class C misdemeanor.

The proposed bill amends A.C.A. § 5-39-305, Criminal trespass on land located in unincorporated area, to create new courses of conduct, increase the penalty for certain courses of conduct, and add an intent requirement.

¹ This impact assessment was prepared (2/27/2017, 3:02 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

- As currently written, a person commits the offense of criminal trespass on land located in an unincorporated area if, without written permission, the offender enters another person’s land located outside the boundary of any city or town and the land is lawfully posted, crop land, or enclosed with a fence.
 - Criminal trespass on land located in unincorporated area is a Class B misdemeanor if the property was posted pursuant to Arkansas law.
 - All other criminal trespass on land located in unincorporated area is a Violation.
- Under the proposed bill, a person commits the offense of criminal trespass on *premises* located in unincorporated area if, without written permission, the offender *purposely* enters another person’s *premises* outside the boundary of any city or town and the *premises* are lawfully posted, crop *or timber* land, or enclosed with a fence. (***Bold italics*** indicate a change from the law as written.)
 - Criminal trespass on premises located in unincorporated area is a Class D felony if the offender has two (2) or more prior convictions for a Class A misdemeanor violation of A.C.A. § 5-39-209 or § 5-39-305.
 - Criminal trespass on premises located in unincorporated area is a Class A misdemeanor if:
 - the person commits criminal trespass on premises located in unincorporated area while in possession of a killing device, a harvesting device, a device primarily used for the location and unearthing of artifacts, or a tool designed to gain entry into a structure by breaking a lock or breaking through a fence, or
 - the person is on the premises of a commercial fishing or fish breeding operation while in possession of a fishing pole or net designed to catch fish, or
 - the person has a prior conviction under A.C.A § 5-39-305.
 - Criminal trespass on premises located in unincorporated area is a Class B misdemeanor if the premises involved is an occupiable structure, or the conduct involves the removal of a posted sign, fence, or portion of a fence. (This replaces the requirement that the property be posted pursuant to Arkansas law.)
 - All other criminal trespass on premises in unincorporated area remains a Violation. (Some conduct that was previously a Class B misdemeanor may now be a Violation.)

There are other provisions amended by the proposed bill including: A.C.A. § 5-39-101, Definitions, to add definitions of “Artifact”, “Harvesting device”, “Killing device”, and “Natural resource”, and A.C.A. § 5-5-201, concerning forfeiture requirements. The proposed bill creates a defense to prosecution for those acting lawfully and exemptions for various public servants acting within the scope of their employment.

Impact Information

The proposed bill increases penalties for various courses of conduct constituting Criminal trespass. Available data on convictions for Criminal trespass, A.C.A. § 5-39-203, and Criminal trespass on land located in an unincorporated area, A.C.A. § 5-39-305, does not distinguish between the various courses of conduct constituting these offenses. Therefore, the exact impact of this proposed bill cannot be determined. The following data is for informational purposes only.

The Administrative Office of the Courts (AOC) reports that from 1/1/2013- 12/31/2015 there were 203 convictions for A.C.A. § 5-39-203, Class B misdemeanor and 213 convictions for A.C.A. § 5-39-203, Class C misdemeanor. During that time, there were eighteen (18) convictions for A.C.A. § 5-39-305, Class B misdemeanor and two (2) convictions for A.C.A. § 5-39-305, Violation.

The Arkansas Game & Fish Commission (AGFC) reports that in calendar years 2015 and 2016 there were 309 citations and 498 warnings issued for Code 5.35- Hunting, Fishing, or Trapping without Permission. Under the proposed bill, these citations and warnings could possibly be Class A misdemeanors which may be subject to the Class D felony upon a third or subsequent conviction.

A.C.A. § 5-39-203. Criminal trespass.

(a) A person commits criminal trespass if he or she purposely enters or remains unlawfully in or upon:

- (1) A vehicle; or
- (2) The premises of another person.

(b) Criminal trespass is a:

(1) Class B misdemeanor if:

(A) The vehicle or premises involved is an occupiable structure; or

(B) The conduct involves the removal of a posted sign, a fence, or a portion of a fence as defined in § 2-39-102; or

(2) Class C misdemeanor if otherwise committed.

(c) An individual aggrieved by a violation of this section is granted a private cause of action against the person who violated this section and is entitled to recover:

- (1) Actual damages caused by the violation;
- (2) Reasonable attorney's fees; and
- (3) Punitive damages.

HISTORY: Acts 1975, No. 280, § 2004; A.S.A. 1947, § 41-2004; Acts 2013, No. 960, § 2.

A.C.A. § 5-39-305. Criminal trespass on land located in unincorporated area.

- (a) (1) A person shall not enter without written permission of the owner or lessee upon another person's land located outside the boundary of any city or town if that land is either:
 - (A) Lawfully posted;
 - (B) Crop land; or
 - (C) Enclosed with a fence sufficient under § 2-39-101 et seq.
- (2) The posting of land is not a requirement under this section.
- (b) (1) Any person who violates this section is deemed guilty of a violation and is subject to a fine not to exceed one hundred dollars (\$100).
- (2) However, a violation of this section is a Class B misdemeanor if the property was posted pursuant to the laws of this state.
- (c) It is an affirmative defense to a prosecution that:
 - (1) The person did not knowingly enter upon another person's land;
 - (2) The person was a guest or invitee;
 - (3) The person was required to enter upon the premises of another person for a business reason or for health and safety reasons;
 - (4) The person was authorized by law to enter upon the land; or
 - (5) The privately owned land was made open to the public.
- (d) (1) This section does not apply to public land.
- (2) This section does not apply to a law enforcement officer in the line of duty.
- (e) Nothing in this section repeals any law concerning posting of land or trespass.

HISTORY: Acts 1995, No. 870, §§ 1, 2; 1999, No. 1029, § 4.