



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB2103
Sponsored by Representative V. Flowers**

Subtitle CONCERNING THE SENTENCES AVAILABLE FOR A CAPITAL OFFENSE.

Impact Summary¹ Undetermined.

Change from current law² Amends Arkansas Code § 5-4-615, Conviction – Punishments, by removing death by lethal injection and substituting life imprisonment as a possible punishment for someone convicted of a capital offense.

Amends Arkansas Code § 5-10-101(c)(1), concerning the penalties for capital murder, by removing death as a possible punishment for an offender who was eighteen (18) years of age or older at the time he or she committed the capital murder. The proposed bill substitutes life imprisonment for the death penalty.

Amends Arkansas Code § 5-51-201(c), concerning the penalties for treason, by removing death as a possible punishment for an offender convicted of treason. The proposed bill substitutes life imprisonment for the death penalty.

See attached for copies of these code provisions.

Impact Information

The Arkansas Department of Correction reports that there are thirty-three (33) inmates on death row. All inmates are male and ages range from 31-61 years of age. Ethnic make-up is as follows: seventeen (17) African Americans, fifteen (15) Caucasians, and one (1) Hispanic. The following information on daily cost of care and average sentence length was provided by the Arkansas Department of Correction (ADC).

ADC reports that the daily cost of care for an inmate on Death Row is calculated at \$57.57 per day. The daily cost of care for an inmate in the general population, serving a sentence of life imprisonment or life imprisonment without parole, is calculated at \$60.51 per day.

The average length of stay until death with a death sentence is 12 years, 0 months, 12 days. This average does not include those inmates currently on death row. Inmates included in this calculation are those inmates who were on death row from 1976 until 2014 and have either been executed or passed away while on death row. The last execution was carried out in 2005, however, an inmate serving a death sentence passed away in 2014.

¹ This impact assessment was prepared (3/14/2017, 8:39 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 average length of stay until death with a life sentence without parole is 18 years, 10 months, 6 days. Inmates included in this calculation are those inmates who were incarcerated from 1971 through 2016 and have passed away while serving a sentence of life without parole.

The average length of stay until death with a life sentence for the offense of Murder in the first degree is 22 years, 0 months, 6 days. Inmates included in this calculation are those inmates who were incarcerated from 1962 through 2016 and have passed away while serving a sentence of life.

ADC has never calculated the cost of carrying out an execution. Since it has been approximately eleven years since an execution has been carried out, ADC was unable to do so for purposes of this impact.

A.C.A § 5-10-101 Capital murder.

(a) A person commits capital murder if:

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

(A) The person commits or attempts to commit:

(i) Terrorism, as defined in § 5-54-205;

(ii) Rape, § 5-14-103;

(iii) Kidnapping, § 5-11-102;

(iv) Vehicular piracy, § 5-11-105;

(v) Robbery, § 5-12-102;

(vi) Aggravated robbery, § 5-12-103;

(vii) Residential burglary, § 5-39-201(a);

(viii) Commercial burglary, § 5-39-201(b);

(ix) Aggravated residential burglary, § 5-39-204;

(x) A felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 -- 5-64-508, involving an actual delivery of a controlled substance; or

(xi) First degree escape, § 5-54-110; and

(B) In the course of and in furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of a person under circumstances manifesting extreme indifference to the value of human life;

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

(A) The person commits or attempts to commit arson, § 5-38-301; and

(B) In the course of and in furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person;

(3) With the premeditated and deliberated purpose of causing the death of any law enforcement officer, jailer, prison official, firefighter, judge or other court official, probation officer, parole officer, any military personnel, or teacher or school employee, when such person is acting in the line of duty, the person causes the death of any person;

(4) With the premeditated and deliberated purpose of causing the death of another person, the person causes the death of any person;

(5) With the premeditated and deliberated purpose of causing the death of the holder of any public office filled by election or appointment or a candidate for public office, the person causes the death of any person;

(6) While incarcerated in the Department of Correction or the Department of Community Correction, the person purposely causes the death of another person after premeditation and deliberation;

(7) Pursuant to an agreement that the person cause the death of another person in return for anything of value, he or she causes the death of any person;

(8) The person enters into an agreement in which a person is to cause the death of another person in return for anything of value, and a person hired pursuant to the agreement causes the death of any person;

(9) (A) Under circumstances manifesting extreme indifference to the value of human life, the person knowingly causes the death of a person fourteen (14) years of age or younger at the time the murder was committed if the defendant was eighteen (18) years of age or older at the time the murder was committed.

(B) It is an affirmative defense to any prosecution under this subdivision (a)(9) arising from the failure of the parent, guardian, or person standing in loco parentis to provide specified medical or surgical treatment, that the parent, guardian, or person standing in loco parentis relied solely on spiritual treatment through prayer in accordance with the tenets and practices of an established church or religious denomination of which he or she is a member; or

(10) The person:

(A) Purposely discharges a firearm from a vehicle at a person or at a vehicle, conveyance, or a residential or commercial occupiable structure that he or she knows or has good reason to believe to be occupied by a person; and

(B) Thereby causes the death of another person under circumstances manifesting extreme indifference to the value of human life.

(b) It is an affirmative defense to any prosecution under subdivision (a)(1) of this section for an offense in which the defendant was not the only participant that the defendant did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid in the homicidal act's commission.

(c) (1) Capital murder is punishable as follows:

(A) If the defendant was eighteen (18) years of age or older at the time he or she committed the capital murder:

(i) Death; or

(ii) Life imprisonment without parole under §§ 5-4-601 -- 5-4-605, 5-4-607, and 5-4-608; or

(B) If the defendant was younger than eighteen (18) years of age at the time he or she committed the capital murder:

(i) Life imprisonment without parole as it is defined in § 5-4-606; or

(ii) Life imprisonment with the possibility of parole after serving a minimum of twenty-eight (28) years' imprisonment.

(2) For any purpose other than disposition under §§ 5-4-101 -- 5-4-104, 5-4-201 -- 5-4-204, 5-4-301 -- 5-4-307, 5-4-401 -- 5-4-404, 5-4-501 -- 5-4-504, 5-4-601 -- 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-314, capital murder is a Class Y felony.

HISTORY: Acts 1975, No. 280, § 1501; 1983, No. 341, § 1; 1985, No. 840, § 1; A.S.A. 1947, § 41-1501; Acts 1987, No. 242, § 2; 1989, No. 97, § 1; 1989, No. 856, § 1; 1991, No. 683, § 1; 1993, No. 1189, § 2; 1995, No. 258, § 1; 1995, No. 800, § 1; 2003, No. 1342, § 5; 2007, No. 827, §§ 19, 20; 2009, No. 748, § 6; 2009, No. 1395, § 3; 2011, No. 570, § 22; 2013, No. 1490, § 3.

A.C.A § 5-51-201. Treason.

(a) Treason against the state shall consist only in:

- (1) Levying war against the state; or
- (2) Adhering to the state's enemies, giving them aid and comfort.

(b) No person shall be convicted of treason unless on:

- (1) The testimony of two (2) witnesses to the same overt act; or
- (2) The person's own confession in open court.

(c) Treason is punishable by death or life imprisonment without parole pursuant to §§ 5-4-601 -- 5-4-605, 5-4-607, and 5-4-608.

(d) For all purposes other than disposition under §§ 5-4-101 -- 5-4-104, 5-4-201 -- 5-4-204, 5-4-301 -- 5-4-307, 5-4-401 -- 5-4-404, 5-4-501 -- 5-4-504, 5-4-601 -- 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-314, treason is a Class A felony.

HISTORY: Rev. Stat., ch. 44, div. 2, art. 1, §§ 1, 2; C. & M. Dig., §§ 2321, 2322; Pope's Dig., §§ 2947, 2948; Acts 1975, No. 928, § 13; A.S.A. 1947, §§ 41-3951, 41-3952; Acts 2005, No. 1994, § 296; 2011, No. 570, § 31.