



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1403
Sponsored by Representative McCullough**

Subtitle CONCERNING THE SENTENCE ENHANCEMENT AVAILABLE AGAINST A PERSON WHO COMMITS CERTAIN OFFENSES IN THE PRESENCE OF A CHILD; AND TO ADD CERTAIN OFFENSES ELIGIBLE FOR THE SENTENCE ENHANCEMENT.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 5-4-702, Enhanced penalties for offenses committed in the presence of a child. Under current law, any person who commits a felony offense involving homicide, A.C.A. §§ 5-10-101 to 5-10-103, assault or battery, A.C.A. § 5-13-201 et seq., or domestic battering or assault on a family member or household member, A.C.A. §§ 5-26-303 to 5-26-309, may be subject to an enhanced sentence of an additional term of imprisonment of not less than one (1) year and not greater than ten (10) years if the offense is committed in the presence of a child. The enhanced portion of the sentence is consecutive to any other sentence imposed and is not eligible for early release on parole or community correction transfer. See attached for a reprint of the code section as currently written.

Under the proposed bill, a person who commits Aggravated robbery, A.C.A. § 5-12-103, Rape, A.C.A. § 5-14-103, or Sexual assault in the second degree, A.C.A. § 5-14-125, may also be subject to the enhanced sentence if the offense is committed in the presence of a child.

Impact Information

The proposed bill expands the number of offenses to which the enhanced penalty for offenses committed in the presence of a child may be applied. Because available data does not indicate how many occurrences of the newly proposed offenses were committed in the presence of a child, this impact cannot be determined. The following information is provided for informational purposes only.

The Arkansas Department of Correction reports that there are currently 47 inmates serving an enhanced sentence pursuant to A.C.A. § 5-4-702, Enhanced penalties for offenses committed in the presence of a child, as it is currently written.

¹ This impact assessment was prepared (2/11/2019, 12:41 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

The Administrative Office of the Courts (AOC) reports that for the three year period beginning January 1, 2015 and ending December 31, 2017, there were 7,149 convictions for offenses listed under A.C.A. § 5-4-702, as it is currently written. AOC also reports that for the same time period, there were 692 convictions for Aggravated Robbery, A.C.A. § 5-12-103, 452 convictions for Rape, A.C.A. § 5-14-103, and 897 convictions for Sexual assault second degree, A.C.A. § 5-14-125. Of these offenses, data does not indicate how many were committed in the presence of a child.

A.C.A. § 5-4-702. Enhanced penalties for offenses committed in presence of a child.

(a) Any person who commits a felony offense involving homicide, §§ 5-10-101 -- 5-10-103, assault or battery, § 5-13-201 et seq., or domestic battering or assault on a family member or household member, §§ 5-26-303 -- 5-26-309, may be subject to an enhanced sentence of an additional term of imprisonment of not less than one (1) year and not greater than ten (10) years if the offense is committed in the presence of a child.

(b) Any person who commits the offense of aggravated cruelty to a dog, cat, or equine under § 5-62-104 may be subject to an enhanced sentence of an additional term of imprisonment not to exceed five (5) years if the offense is committed in the presence of a child.

(c)

(1) To seek an enhanced penalty established in this section, a prosecuting attorney shall notify the defendant in writing that the defendant is subject to the enhanced penalty.

(2) If the defendant is charged by information or indictment, the prosecuting attorney may include the written notice in the information or indictment.

(d) The enhanced portion of the sentence is consecutive to any other sentence imposed.

(e) Any person convicted under this section is not eligible for early release on parole or community correction transfer for the enhanced portion of the sentence.

HISTORY: Acts 2001, No. 1707, § 2; 2007, No. 1047, § 1; 2009, No. 33, § 1; 2009, No. 936, § 1; 2017, No. 389, § 1.