



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1610
Sponsored by Representative Gazaway**

Subtitle AMENDING THE SENTENCING RANGE FOR THE OFFENSE OF BATTERY IN THE SECOND DEGREE.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 5-13-202, Battery in the second degree, to increase the penalty when a person recklessly causes serious physical injury to another person while operating or in actual physical control of a motor vehicle or motorboat if, at the time, the person is intoxicated or 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. Currently, this conduct is a Class D felony. Under the proposed bill, this conduct is a Class C felony.

Impact Information

While the increase from a Class D felony to a Class C felony will likely have an effect on prison sentences for the conduct covered by the proposed bill, charging practices across the State vary. Some sentencing data is available for battery in the second degree - motor vehicle or motor boat, but there are three (3) other courses of conduct by which a person can commit battery in the second degree. Because the course of conduct covered by this proposed bill is not uniformly notated by its individual sub-section in available data, the impact cannot be determined. The following data is provided for informational purposes only.

The Arkansas Department of Correction reports that there are currently seven (7) inmates serving a term of incarceration for which A.C.A. § 5-13-202(a)(3)(B), Battery in the second degree - motor vehicle or motor boat, is the primary offense. There are an additional 188 inmates serving a term of incarceration for which A.C.A. § 5-13-202, Battery in the second degree, is the primary offense.

The Administrative Office of the Courts reports that for the three (3) year period beginning January 1, 2015 and ending December 31, 2017, there were 33 convictions for a violation of A.C.A. § 5-13-202(a)(3)(B), Battery in the second degree - motor vehicle or motor boat. Only eighteen (18) counties reported any convictions for A.C.A. § 5-13-202(a)(3)(B), Battery in the second degree - motor vehicle or motor boat. There were an additional 1,146 convictions for a violation of A.C.A. § 5-13-202, Battery in the second degree (covering all courses of conduct).

¹ This impact assessment was prepared (3/7/2019, 3:52 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

According to the Arkansas State Police Traffic Crash Statistics for 2014 (the most recent year for which a report has been published), there were 206 crashes resulting in an “incapacitating injury” and in which alcohol was a factor. [See below for definition of “incapacitating injury” as used in the 2014 report]. This data does not differentiate between those crashes in which the driver was legally intoxicated and those in which alcohol was otherwise a factor. Data also does not indicate whether the person injured was the driver or another person. Further, the definition of “incapacitating injury” includes some injuries which may not rise to the level of “serious physical injury” as required in this proposed bill.

Incapacitating Injury (code 2) – Any injury, other than a fatal injury, which prevents the injured person from walking, driving or normally continuing the activities the person was capable of performing before the injury occurred.

Inclusions:

- Severe lacerations
- Broken or distorted limbs
- Skull or chest injuries
- Abdominal injuries
- Unconsciousness at or when taken from the scene
- Unable to leave the scene without assistance
- And others

Exclusions:

- Momentary unconsciousness
- And others