



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1577
Sponsored by Representative Hammer**

Subtitle CONCERNING THE OFFENSE OF ARSON; AND CONCERNING THE STATUTE OF LIMITATIONS FOR ARSON.

Impact Summary¹ Minimal, affecting fewer than ten offenders per year.

Change from current law² Amends Arkansas Code Annotated § 5-38-301, Arson, by adding a new course of conduct by which a person can commit this offense. Under the proposed bill, a person commits arson if he or she starts a fire or causes an explosion with the purpose of destroying or otherwise damaging an area of real property being used for the commercial growth of timber or other agricultural product if the timber or other agricultural product is destroyed or made commercially non-viable and the value of the destroyed or commercially non-viable timber or other agricultural product is more than five thousand dollars (\$5,000). The other courses of conduct constituting arson remain intact. Under the proposed bill, this new course of conduct would constitute a Class B felony. See attached for a copy of A.C.A. § 5-38-301, as currently written.

The proposed bill also amends the statute of limitations for arson. Under current law, A.C.A. § 5-1-109, the statute of limitations for arson is either: one (1) year (for misdemeanors), three (3) years (for Class B, C, and D felonies), or six (6) years (for Class Y and A felonies). The proposed bill would extend the statute of limitations to ten (10) years if the arson was committed by burning an area of real property being used for the growth of timber or other agricultural product and rendering more than five thousand dollars (\$5,000) worth of timber or other agricultural product destroyed or commercially nonviable. See attached for a copy of A.C.A. § 5-1-109, as currently written.

Impact Information

Some conduct covered under the proposed bill is potentially already criminalized under existing law, A.C.A. § 5-38-311, Unlawful Burning - Miscellaneous Felonies, a Class C felony. See attached for a reprint of this code section. Under the proposed bill, some convictions under existing statute A.C.A. § 5-38-311 may constitute a

¹ This impact assessment was prepared (2/27/2017, 3:15 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	Misdemeanors	
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class B	Up to 90 days; up to \$1,000
				Class C	Up to 30 days; up to \$500

Class B felony if the damage exceeds five thousand dollars (\$5,000). The following information is provided for informational purposes.

The Arkansas Department of Correction reports that as of January 31, 2017, there are four (4) inmates serving a sentence for A.C.A. § 5-38-311, Unlawful Burning- Miscellaneous Felonies, a Class C felony.

The Administrative Office of the Courts reports that for the three (3) year period beginning January 1, 2013, and ending December 31, 2015, there were nine (9) convictions for a violation of § 5-38-311, Unlawful Burning - Miscellaneous Felonies, a Class C felony.

Because of the relatively low number of convictions for provisions criminalizing similar conduct, the projected impact of this proposed bill is minimal.

A.C.A. § 5-1-109. Statute of limitations.

- (a) (1) A prosecution for the following offenses may be commenced at any time:
- (A) Capital murder, § 5-10-101;
 - (B) Murder in the first degree, § 5-10-102;
 - (C) Murder in the second degree, § 5-10-103;
 - (D) Rape, § 5-14-103, if the victim was a minor at the time of the offense;
 - (E) Sexual indecency with a child, § 5-14-110;
 - (F) Sexual assault in the first degree, § 5-14-124;
 - (G) Sexual assault in the second degree, § 5-14-125, if the victim was a minor at the time of the offense;
 - (H) Incest, § 5-26-202, if the victim was a minor at the time of the offense;
 - (I) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
 - (J) Transportation of minors for prohibited sexual conduct, § 5-27-305;
 - (K) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
 - (L) Producing, directing, or promoting a sexual performance by a child, § 5-27-403; and
 - (M) Computer exploitation of a child in the first degree, § 5-27-605.

(2) A prosecution may be commenced for a violation of the following offenses, if, when the alleged violation occurred, the offense was committed against a minor, the violation has not been previously reported to a law enforcement agency or prosecuting attorney, and the victim has not reached the age of twenty-eight (28) years of age:

- (A) Sexual assault in the third degree, § 5-14-126;
- (B) Sexual assault in the fourth degree, § 5-14-127;
- (C) Endangering the welfare of a minor in the first degree, § 5-27-205;
- (D) Permitting abuse of a minor, § 5-27-221; and
- (E) Computer child pornography, § 5-27-603.

(b) Except as otherwise provided in this section, a prosecution for another offense shall be commenced within the following periods of limitation after the offense's commission:

- (1) (A) Class Y felony or Class A felony, six (6) years.
(B) However, for rape, § 5-14-103, the period of limitation is eliminated if biological evidence of the alleged perpetrator is identified that is capable of producing a deoxyribonucleic acid (DNA) profile;
- (2) Class B felony, Class C felony, Class D felony, or an unclassified felony, three (3) years;
- (3) (A) Misdemeanor or violation, one (1) year.
(B) However:
 - (i) For failure to notify by a mandated reporter in the first degree, § 12-18-201, and failure to notify by a mandated reporter in the second degree, § 12-18-202, the period of limitation is ten (10) years after the child victim reaches eighteen (18) years of age if the child in question was subject to child maltreatment; and
 - (ii) For a nine-point or greater violation of an Arkansas State Game and Fish Commission regulation, the period of limitation is three (3) years; and
- (4) Municipal ordinance violation, one (1) year unless a different period of time not to exceed three (3) years is set by ordinance of the municipal government.

(c) If the period prescribed in subsection (b) of this section has expired, a prosecution may nevertheless be commenced for:

- (1) Any offense involving either fraud or breach of a fiduciary obligation, within one (1) year after the offense is discovered or should reasonably have been discovered by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself or herself not a party to the offense; and
- (2) (A) Any offense that is concealed involving felonious conduct in office by a public servant at any time within five (5) years after he or she leaves public office or employment or within five (5) years after the

offense is discovered or should reasonably have been discovered, whichever is sooner.

(B) However, in no event does this subdivision (c)(2) extend the period of limitation by more than ten (10) years after the commission of the offense.

(d) A defendant may be convicted of any offense included in the offense charged, notwithstanding that the period of limitation has expired for the included offense, if as to the offense charged the period of limitation has not expired or there is no period of limitation, and there is sufficient evidence to sustain a conviction for the offense charged.

(e) **(1)** For the purposes of this section, an offense is committed either when:

(A) Every element occurs; or

(B) If a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time the course of conduct or the defendant's complicity in the course of conduct is terminated.

(2) Time starts to run on the day after the offense is committed.

(f) A prosecution is commenced when an arrest warrant or other process is issued based on an indictment, information, or other charging instrument if the arrest warrant or other process is sought to be executed without unreasonable delay.

(g) The period of limitation does not run:

(1) **(A)** During any time when the accused is continually absent from the state or has no reasonably ascertainable place of abode or work within the state.

(B) However, in no event does this subdivision (g)(1) extend the period of limitation otherwise applicable by more than three (3) years; or

(2) During any period when a prosecution against the accused for the same conduct is pending in this state.

(h) If the period prescribed in subsection (b) of this section has expired, a prosecution may nevertheless be commenced for a violation of the following offenses if, when the alleged violation occurred, the offense was committed against a minor, the violation has not previously been reported to a law enforcement agency or prosecuting attorney, and the period prescribed in subsection (b) of this section has not expired since the victim has reached eighteen (18) years of age:

(1) Battery in the first degree, § 5-13-201;

(2) Battery in the second degree, § 5-13-202;

(3) Aggravated assault, § 5-13-204;

(4) Terroristic threatening in the first degree, § 5-13-301;

(5) Kidnapping, § 5-11-102;

(6) False imprisonment in the first degree, § 5-11-103;

(7) Permanent detention or restraint, § 5-11-106; and

(8) Criminal attempt, criminal solicitation, or criminal conspiracy to commit any offense listed in this subsection, §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401.

(i) If there is biological evidence connecting a person with the commission of an offense and that person's identity is unknown, the prosecution is commenced if an indictment or information is filed against the unknown person and the indictment contains the genetic information of the unknown person and the genetic information is accepted to be likely to be applicable only to the unknown person.

(j) When deoxyribonucleic acid (DNA) testing implicates a person previously identified through a search of the State DNA Data Base or National DNA Index System, a statute of limitation shall not preclude prosecution of the offense.

HISTORY: Acts 1975, No. 280, § 104; 1981, No. 620, § 1; A.S.A. 1947, § 41-104; Acts 1987, No. 484, § 1; 1987, No. 586, § 1; 2001, No. 920, § 1; 2001, No. 1780, § 2; 2003, No. 1087, § 8; 2003, No. 1390, § 1; 2005, No. 2250, § 1; 2009, No. 1444, § 1; 2011, No. 698, § 1; 2011, No. 1127, §§ 1, 2; 2013, No. 144, § 1; 2013, No. 1086, § 1; 2015, No. 1009, § 1.

A.C.A. § 5-38-311. Unlawful burning -- Miscellaneous felonies.

(a) The following acts are Class C felonies:

(1) Purposely setting on fire the land of another person;

(2) Starting a fire on the person's own land that he or she has leased or is under his or her control with the intent of letting the fire escape to the land of another person; and

(3) The destruction or injuring of, or theft of, any telephone line, tower, building, tool, or equipment used in the detection, reporting, or suppression of fires.

(b) No bond for costs shall be required in any court of this state for prosecution for violation of a provision of this section.

HISTORY: Acts 1935, No. 85, §§ 2, 8; Pope's Dig., §§ 3050, 3056; Acts 1979, No. 225, § 1; 1981, No. 845, § 3; A.S.A. 1947, §§ 41-1952, 41-1958; Acts 2005, No. 1994, § 416.

A.C.A. § 5-38-301. Arson.

(a) A person commits arson if he or she:

(1) Starts a fire or causes an explosion with the purpose of destroying or otherwise damaging:

- (A)** An occupiable structure or motor vehicle that is the property of another person;
- (B)** Any property, whether his or her own or property of another person, for the purpose of collecting any insurance for the property;
- (C)** Any property, whether his or her own or property of another person, if the act thereby negligently creates a risk of death or serious physical injury to any person;
- (D)** A vital public facility;
- (E)** Any dedicated church property used as a place of worship exempt from taxes pursuant to § 26-3-301; or
- (F)** Any public building or occupiable structure that is either owned or leased by the state or any political subdivision of the state; or

(2) Recklessly causes a fire or an explosion in the course of and in furtherance of a felony or in immediate flight after committing a felony that results in destroying or otherwise damaging:

- (A)** Any occupiable structure or motor vehicle;
- (B)** Any property, if the fire or explosion creates a risk of death or serious physical injury to any person;
- (C)** A vital public facility;
- (D)** Any dedicated church property used as a place of worship exempt from taxes pursuant to § 26-3-301; or
- (E)** Any public building or occupiable structure that is either owned or leased by the state or any political subdivision of the state.

(b) Arson is a:

(1) Class A misdemeanor if the property sustains less than five hundred dollars (\$500) worth of damage;

(2) Class D felony if the property sustains at least five hundred dollars (\$500) but less than two thousand five hundred dollars (\$2,500) worth of damage;

(3) Class C felony if the property sustains at least two thousand five hundred dollars (\$2,500) but less than five thousand dollars (\$5,000) worth of damage;

(4) Class B felony if the property sustains at least five thousand dollars (\$5,000) but less than fifteen thousand dollars (\$15,000) worth of damage;

(5) Class A felony if the property sustains at least fifteen thousand dollars (\$15,000) but less than one hundred thousand dollars (\$100,000) worth of damage; or

(6) Class Y felony if the property sustains damage in an amount of at least one hundred thousand dollars (\$100,000).

(c) As used in this section, "motor vehicle" means every self-propelled device in, upon, or by which any person or property is, or may be, transported or drawn upon a street or highway.

- (d)**
- (1)**
 - (A)** If the Governor deems it necessary, he or she may offer a reward not to exceed fifty thousand dollars (\$50,000) for information leading to the apprehension, arrest, and conviction of a person who has committed, attempted to commit, or conspired to commit a criminal offense under this section.
 - (B)** The fifty-thousand-dollar reward maximum imposed by this section only applies to state-appropriated funds.
 - (C)** The Governor may increase the amount of any reward offered by use of funds from the Reward Pool Fund created in this section.

(2) When the Governor offers a reward pursuant to this section, he or she may place any reasonable condition upon collection of the reward as he or she deems necessary.

- (3) (A) The Governor may establish and administer a fund to be known as the "Reward Pool Fund".
(B) Any monetary donation or gift made by a private citizen or corporation for the purpose of offering a reward or enhancing a state-funded reward offered for information leading to the apprehension, arrest, and conviction of a person who has committed, attempted to commit, or conspired to commit a criminal offense under this section shall be deposited into the fund.
(C) (i) The Governor shall have the sole discretion to determine if and how much of the fund is offered in a particular criminal case.
(ii) However, if the donor places any lawful restriction or instruction on use of the donation at the time it is given, the restriction or instruction shall be honored.

(4) Any person completing the requirements to be eligible for the reward is entitled to the reward offered by the Governor, and the Governor shall certify the amount of the reward to the Auditor of State, who shall issue his or her warrant on the State Treasury for the reward, to be paid out of any money appropriated or deposited into the fund.

HISTORY: Acts 1975, No. 280, § 1902; 1981, No. 544, § 1; A.S.A. 1947, § 41-1902; Acts 1987, No. 242, § 1; 1991, No. 299, § 1; 1997, No. 921, § 1; 2005, No. 1529, § 1; 2007, No. 827, § 42.

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.