



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1578
Sponsored by Representative Hammer**

Subtitle CONCERNING OFFENSES INVOLVING RIOTS, INTERFERENCE WITH EMERGENCY MEDICAL SERVICES PERSONNEL OR FIRST RESPONDERS, DISORDERLY CONDUCT, AND OBSTRUCTING A HIGHWAY OR OTHER PUBLIC PASSAGE; AND ESTABLISHING CIVIL LIABILITY.

Impact Summary¹ Cannot be determined.

Change from current law² Amends several criminal provisions in the Arkansas Code.

The proposed bill amends Arkansas Code Annotated § 5-60-123, Obstruction or interference with emergency medical personnel to add first responders to the list of potential victims of the crime, add an intent requirement, and increase the penalty for certain courses of conduct. Under current law, a person commits the offense of obstruction or interference with emergency medical personnel if he or she obstructs or interferes with emergency services personnel, a rescue technician, or any other emergency medical services provider in the performance of his or her rescue mission. Under current law, this conduct constitutes a Class A misdemeanor if the obstruction or interference is committed by using or threatening to use physical force or a Class C misdemeanor if otherwise committed. Under the proposed bill, a person commits the offense of obstruction or interference with emergency medical personnel **or first responder** if the person **knowingly** obstructs or interferes with emergency medical services personnel **or first responder** in the performance of the emergency medical services personnel **or first responder's** rescue mission. (*Bold italics* indicate a change from the law as currently written.) The penalties for knowingly committing this conduct remain the same as in current law, a Class A misdemeanor if committed by using or threatening to use physical force, and a Class C misdemeanor if otherwise committed. The proposed bill also creates a Class D felony if an offender **purposely** obstructs or interferes with emergency medical services personnel or first responder in the performance of their rescue mission.

¹ This impact assessment was prepared (2/27/2017, 3:12 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 proposed bill amends A.C.A. § 5-71-101 to add a definition of “Riot”. Under the proposed bill, a “Riot” is violent conduct by three (3) or more persons acting in concert that creates a substantial risk of: causing public alarm; disrupting the performance of a governmental function; damaging or injuring property or a person; or impeding travel or public right-of access to a road, highway or thoroughfare designed for transit. This changes the number of people required to be involved in a riot from two (2) to three (3) as well as adds a new course of conduct, impeding travel or public right-of-access to a road, highway, or thoroughfare designed for transit, by which certain offenses referring to a riot (see A.C.A. § 5-71-201, Riot,) may be committed.

The proposed bill amends A.C.A. § 5-71-201, Riot, to remove the definition of riot contained within the section. A violation of A.C.A. § 5-71-201, Riot, remains a Class A misdemeanor, but the conduct is changed as described in the preceding paragraph.

The proposed bill amends A.C.A. § 5-71-202, Aggravated riot, due to the change in the definition of “Riot” described above. A violation of A.C.A. § 5-71-202, Aggravated Riot, remains a Class D felony.

The proposed bill amends A.C.A. § 5-71-203, Inciting a riot, due to the change in the definition of “Riot” described above and by adding a new course of conduct by which a person can commit the offense of inciting a riot. Under the proposed bill, a person commits the offense of inciting a riot if he or she knowingly employs, contracts, or pays another person, group of persons, or an entity representing or employing more than one (1) person to engage in, instigate, or participate in a riot. A.C.A. § 5-71-203, Inciting a riot, remains a Class D felony if injury to a person or damage to property results from the offense or a Class A misdemeanor if otherwise committed.

The proposed bill amends A.C.A. § 5-71-204, Arming a rioter, due to the change in the definition of “Riot” described above and by adding a requirement that the offender knowingly performed the criminalized conduct. A.C.A. § 5-71-204, Arming a rioter, remains a Class B felony.

The proposed bill amends A.C.A. § 5-71-207, Disorderly conduct, by raising the penalty for certain courses of conduct. Under current law, a violation of A.C.A. § 5-71-207, Disorderly conduct, is a Class C misdemeanor. Under the proposed bill, a violation of A.C.A. § 5-71-207, Disorderly conduct, is a Class A misdemeanor if the person commits the offense of disorderly conduct by obstructing vehicular traffic on a federal interstate highway or state highway. Disorderly conduct remains a Class C misdemeanor if otherwise committed.

The proposed bill amends A.C.A. § 5-71-214, Obstructing a highway or other public passage, to increase the penalty for certain courses of conduct. Under the proposed bill, obstructing a highway or other public passage is a Class A misdemeanor if the highway or other public passage obstructed is an interstate or state highway. Obstructing a highway or other public passage remains a Class C misdemeanor if otherwise committed.

Impact Information

Because the proposed bill separates specific courses of conduct from the existing law and assigns more severe penalties, data is unavailable as to the courses of conduct specifically amended by this proposed bill. Because of this data limitation, the exact impact cannot be determined. The following data is for informational purposes only.

The Arkansas Department of Correction reports that as of February 21, 2017, there are two (2) inmates serving a sentence for A.C.A. § 5-71-202, Aggravated Riot, a Class D felony. For these two inmates, the controlling offenses are sentences of Murder in the first degree and Rape, not the sentence for A.C.A. § 5-71-202.

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:

- 2 convictions for a violation of A.C.A. § 5-60-123, Obstruction w/ Emergency Medical Personnel.
- 14 convictions for a violation of A.C.A. § 5-70-201, Riot.
- 2 convictions for a violation of A.C.A. § 5-71-202, Aggravated Riot.
- 3 convictions for a violation of A.C.A. § 5-71-203, Inciting a Riot.
- 3337 convictions for a violation of A.C.A. § 5-71-207, Disorderly Conduct.
- 6 convictions for a violation of A.C.A. § 5-71-214, Obstructing a Highway or Public Passageway.

A.C.A. § 5-71-101. Definitions.

As used in this chapter:

(1) "Deviate sexual activity" means any act of sexual gratification involving:

- (A) The penetration, however slight, of the anus or mouth of one (1) person by the penis of another person; or
- (B) The penetration, however slight, of the vagina or anus of one (1) person by any body member or foreign instrument manipulated by another person;

(2) "Governmental function" means any activity that a public servant is legally authorized to undertake on behalf of any governmental unit he or she serves;

(3) "Occupiable structure" means a vehicle, building, or other structure:

- (A) Where any person lives or carries on a business or other calling;
- (B) Where people assemble for purposes of business, government, education, religion, entertainment, or public transportation; or
- (C) (i) That is customarily used for overnight accommodation of persons, whether or not a person is actually present.
(ii) Each unit of an occupiable structure divided into separately occupied units is itself an occupiable structure;

(4) "Property" means real property or tangible or intangible personal property, including money or any paper or document that represents or embodies anything of value;

(5) "Prostitution" has the meaning specified in § 5-70-102;

(6) "Public building" means a structure owned, operated, or occupied by any agency of the State of Arkansas or its political subdivisions or by any agency of the United States Government;

(7) "Public place" means a publicly or privately owned place to which the public or a substantial number of people have access;

(8) "Vehicle" means any craft or device designed for the transportation of people or property across land or water or through the air; and

(9) "Vital public facility" means a facility maintained for use for:

- (A) Public communications;
- (B) Transportation;
- (C) Supply of water, gas, or power;
- (D) Law enforcement;
- (E) Fire protection;
- (F) Civil or national defense; or
- (G) Other public service.

HISTORY: Acts 1975, No. 280, § 2901; A.S.A. 1947, § 41-2901.

A.C.A. § 5-71-201. Riot.

(a) A person commits the offense of riot if, with two (2) or more other persons, he or she knowingly engages in tumultuous or violent conduct that creates a substantial risk of:

(1) Causing public alarm;

(2) Disrupting the performance of a governmental function; or

(3) Damaging or injuring property or a person.

(b) Riot is a Class A misdemeanor.

HISTORY: Acts 1975, No. 280, § 2902; A.S.A. 1947, § 41-2902.

A.C.A. § 5-71-202. Aggravated riot.

(a) A person commits the offense of aggravated riot if he or she commits the offense of riot when:

(1) The person knowingly possesses a deadly weapon; or

(2) The person knows that another person with whom he or she is acting possesses a deadly weapon.

(b) Aggravated riot is a Class D felony.

HISTORY: Acts 1975, No. 280, § 2903; A.S.A. 1947, § 41-2903; Acts 2007, No. 827, § 92.

A.C.A. § 5-71-203. Inciting riot.

(a) A person commits the offense of inciting riot if he or she knowingly:

(1) By speech or conduct urges others to participate in a riot under circumstances that produce a clear and present danger that they will participate in a riot; or

(2) Gives commands, instructions, or signals to others in furtherance of a riot.

(b) (1) Inciting riot is a Class D felony if injury to a person or damage to property results from the offense.

(2) Otherwise, inciting riot is a Class A misdemeanor.

HISTORY: Acts 1975, No. 280, § 2904; A.S.A. 1947, § 41-2904.

A.C.A. § 5-71-204. Arming rioters.

(a) A person commits the offense of arming rioters if he or she:

(1) Furnishes a deadly weapon or explosive device to another person knowing the deadly weapon or explosive device is to be used in a riot; or

(2) Instructs another person in the preparation or use of a deadly weapon or explosive device knowing that the deadly weapon or explosive device is to be used in a riot.

(b) Arming rioters is a Class B felony.

HISTORY: Acts 1975, No. 280, § 2905; A.S.A. 1947, § 41-2905.

A.C.A. § 5-71-207. Disorderly conduct.

(a) A person commits the offense of disorderly conduct if, with the purpose to cause public inconvenience, annoyance, or alarm or recklessly creating a risk of public inconvenience, annoyance, or alarm, he or she:

- (1)** Engages in fighting or in violent, threatening, or tumultuous behavior;
- (2)** Makes unreasonable or excessive noise;
- (3)** In a public place, uses abusive or obscene language, or makes an obscene gesture, in a manner likely to provoke a violent or disorderly response;
- (4)** Disrupts or disturbs any lawful assembly or meeting of persons;
- (5)** Obstructs vehicular or pedestrian traffic;
- (6)** Congregates with two (2) or more other persons in a public place and refuses to comply with a lawful order to disperse of a law enforcement officer or other person engaged in enforcing or executing the law;
- (7)** Creates a hazardous or physically offensive condition;
- (8)** In a public place, mars, defiles, desecrates, or otherwise damages a patriotic or religious symbol that is an object of respect by the public or a substantial segment of the public; or
- (9)** In a public place, exposes his or her private parts.

(b) Disorderly conduct is a Class C misdemeanor.

HISTORY: Acts 1975, No. 280, § 2908; A.S.A. 1947, § 41-2908; Acts 2007, No. 827, § 93.

A.C.A. § 5-71-214. Obstructing a highway or other public passage.

(a) A person commits the offense of obstructing a highway or other public passage if, having no legal privilege to do so and acting alone or with another person, he or she renders any highway or other public passage impassable to pedestrian or vehicular traffic.

(b) It is a defense to a prosecution under this section that:

(1) The highway or other public passage was rendered impassable solely because of a gathering of persons to hear the defendant speak or otherwise communicate;

(2) The defendant was a member of a gathering contemplated by subdivision (b)(1) of this section; or

(3) The highway or public passage obstructed has not been established as a city street, county road, or state or federal highway under the laws of this state and no civil court has established a right of passage by prescription for the highway or public passage.

(c) Obstructing a highway or other public passage is a Class C misdemeanor.

HISTORY: Acts 1975, No. 280, § 2915; A.S.A. 1947, § 41-2915; Acts 1999, No. 1105, § 1.