



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB20
Sponsored by Senator J. Hendren**

Subtitle CONCERNING THE OFFENSE OF AGGRAVATED ASSAULT UPON A CERTIFIED LAW ENFORCEMENT OFFICER OR AN EMPLOYEE OF A CORRECTIONAL FACILITY; TO PROVIDE A MORE SERIOUS PENALTY FOR KNOWINGLY DISCHARGING A FIREARM AT A LAW ENFORCEMENT OFFICER.

Impact Summary¹ Cannot be determined.

Change from current law² Amends various Arkansas Code Annotated provisions related to Aggravated assault upon a law enforcement officer or an employee of a correctional facility. This impact focuses on the provisions with criminal penalties.

Amends A.C.A. § 5-13-211, Aggravated assault upon a certified law enforcement officer or an employee of a correctional facility, to remove the requirement that a law enforcement officer be “certified” for an offender to be charged with this crime. Aggravated assault upon a certified law enforcement officer or an employee of a correctional facility as currently codified is a Class D felony.

The proposed bill creates a new Class Y felony for knowingly discharging a firearm at a law enforcement officer. Under the proposed bill, a person commits this offense if he or she knowingly discharges a firearm with a purpose to cause serious physical injury or death to a law enforcement officer or employee of a correctional officer while he or she is acting within the scope of his or her duties and one or more of the following:

- (1) the person is in custody as a result of a felony conviction;
- (2) is unlawfully at liberty after being sentenced to imprisonment as a result of a felony conviction;
- (3) has a felony conviction for a felony offense which has an element the use or threat of violence against another person or creation of a substantial risk of death or serious physical injury;
- (4) knowingly creates a substantial risk of serious physical injury or death to a person other than the law enforcement officer or employee of a correctional facility;
- (5) causes the death of more than (1) person;
- (6) is acting with a purpose to avoid or prevent an arrest or to escape from custody;
- (7) is acting with a purpose to obtain a pecuniary gain; or
- (8) is acting with a purpose to disrupt or hinder the lawful exercise of any government or political function.

¹ This impact assessment was prepared (1/17/2017, 12:50 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 also classifies Aggravated assault upon a law enforcement officer or an employee of a correctional facility, A.C.A. § 5-13-211, if a Class Y felony, as a serious felony involving violence under the habitual offender statute (A.C.A. § 5-4-501(c)(2)(A)) and as a felony involving violence under the habitual offender statute (A.C.A. § 5-4-501(d)(2)(A)). Further, an attempt, solicitation, or conspiracy to commit this offense is added to the list of felonies involving violence under the habitual offender statute (A.C.A. § 5-4-501(d)(2)(A)(xv)). Under the proposed bill, Aggravated assault upon a law enforcement officer or an employee of a correctional facility, A.C.A. § 5-13-211, if a Class Y felony, is added to the list of offenses for which an extended post-conviction no contact order may be issued.

There are multiple other provisions amended with regard to a conviction for Aggravated assault upon a law enforcement officer or an employee of a correctional facility, A.C.A. § 5-13-211, if a Class Y felony, including employment and licensure disqualifications, prohibition on owning body armor, prohibition on having contact with children in the care of a child welfare agency, DNA samples for juveniles, and adding this offense to the voluntary presumptive sentencing standards concerning weight for criminal history score purposes on juvenile offenders.

Impact Information

Because this proposed bill creates a new course of conduct for committing this offense, data is unavailable as to the likely number of convictions per year. Therefore, the impact of this proposed bill is undetermined.

The Arkansas Department of Correction (ADC) reports that as of January 5, 2017, there are one hundred six (106) inmates serving a sentence for A.C.A. § 5-13-211, Aggravated assault on a certified law enforcement officer or an employee of a correctional facility, Class D felony, as currently written. Of these inmates, sixteen (16) had A.C.A. § 5-13-211 as their most serious offense. These inmates were sentenced to ADC for committing aggravated assault on a *certified* law enforcement officer. The potential for increased impact comes from the larger victim pool created by removing the requirement that the victim law enforcement officer be certified. According to the Arkansas Commission for Law Enforcement Standards and Training, of approximately twelve thousand (12,000) law enforcement officers in Arkansas on any given day, approximately five hundred (500), or four percent (4%) are uncertified.

The conduct contemplated by the proposed Class Y felony is also covered by various Class Y and Class A felonies already existing in the Arkansas Criminal Code, such as Attempted Capital Murder (A.C.A. § 5-10-101, Class Y Felony), Battery I (A.C.A. § 5-13-201(c)(3), Class Y Felony), Attempted Battery I (A.C.A. § 5-13-201(c)(3), Class A Felony).

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. § 5-13-201 Battery in the first degree.

(a) A person commits battery in the first degree if:

- (1) With the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon;
- (2) With the purpose of seriously and permanently disfiguring another person or of destroying, amputating, or permanently disabling a member or organ of that other person's body, the person causes such an injury to any person;
- (3) The person causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life;
- (4) Acting alone or with one (1) or more other persons:
 - (A) The person commits or attempts to commit a felony; and
 - (B) In the course of and in furtherance of the felony or in immediate flight from the felony:
 - (i) The person or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life; or
 - (ii) Another person who is resisting the felony or flight causes serious physical injury to any person;
- (5) With the purpose of causing serious physical injury to an unborn child or to a woman who is pregnant with an unborn child, the person causes serious physical injury to the unborn child;
- (6) The person knowingly causes physical injury to a pregnant woman in the commission of a felony or a Class A misdemeanor, and in so doing, causes serious physical injury to the pregnant woman's unborn child, and the unborn child is subsequently born alive;
- (7) The person knowingly, without legal justification, causes serious physical injury to a person he or she knows to be twelve (12) years of age or younger;
- (8) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a firearm; or
- (9) The person knowingly causes serious physical injury to any person four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life.

(b) It is an affirmative defense in any prosecution under subdivision (a)(4) of this section in which the defendant was not the only participant that the defendant:

- (1) Did not commit the battery or in any way solicit, command, induce, procure, counsel, or aid the battery's commission;
- (2) Was not armed with a deadly weapon;
- (3) Reasonably believed that no other participant was armed with a deadly weapon; and
- (4) Reasonably believed that no other participant intended to engage in conduct that could result in serious physical injury.

(c)

- (1) Except as provided in subdivisions (c)(2) and (3) of this section, battery in the first degree is a Class B felony.
- (2) Battery in the first degree is a Class Y felony under the circumstances described in subdivision (a)(9) of this section.
- (3) Battery in the first degree is a Class Y felony if the injured person is a law enforcement officer acting in the line of duty.

HISTORY: Acts 1975, No. 280, § 1601; A.S.A. 1947, § 41-1601; Acts 1987, No. 482, § 1; 1995, No. 360, § 1; 1995, No. 1305, § 1; 2005, No. 1994, § 474; 2007, No. 622, § 1; 2007, No. 709, § 2; 2007, No. 827, § 26.