



*Arkansas  
Sentencing  
Commission*

**Impact Assessment for HB1733  
Sponsored by Representative Gazaway**

**Subtitle** CONCERNING A THREAT TO COMMIT AN ACT OF MASS VIOLENCE ON SCHOOL PROPERTY.

**Impact Summary**<sup>1</sup> Minimal, affecting fewer than ten offenders per year.

**Change from current law**<sup>2</sup> Amends Arkansas Code Title 5, Chapter 17, to create A.C.A. § 5-17-102, Threatening to commit an act of mass violence on school property. Under the proposed bill, a person commits the offense of threatening to commit an act of violence on school property if (1) the person knowingly threatens to commit an act of mass violence on school property or at a curricular or extracurricular activity sponsored by a school by any means of communication; and (2) places a person or group of persons in a position to reasonably fear for their safety. Under the proposed bill, threatening to commit an act of mass violence on school property is a Class C felony.

The proposed bill also defines the terms “mass violence” and “school.”

**Impact Information**

This proposed bill creates a new felony offense for which data is unavailable as to the likely number of convictions per year. Because the felony provision proposed by this bill is potentially criminalized under felony provisions in existing law, the projected impact of the proposed bill is minimal. The following data is provided for informational purposes.

The Arkansas Department of Correction reports the following:

- Three (3) inmates currently serving a term of incarceration for a violation of A.C.A. § 5-71-210, Communicating a false alarm. None of these offenders are serving a term of incarceration for which A.C.A. § 5-71-210 is the primary offense.
- No inmates currently serving a term of incarceration for a violation of A.C.A. § 5-17-101, Death threat concerning school employee or student.

<sup>1</sup> This impact assessment was prepared (03/12/2019, 09:22 a.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.

<sup>2</sup> 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

- Three (3) inmates currently serving a term of incarceration for a violation of A.C.A. § 5-38-202, Threatening to cause a catastrophe. None of these offenders are serving a term of incarceration for which A.C.A. § 5-38-202, Threatening to cause a catastrophe, is the primary offense.
- 1,062 inmates currently serving a term of incarceration for a violation of A.C.A. § 5-13-301, Terroristic threatening. Fifty-three (53) of these offenders are serving a term of incarceration for which A.C.A. § 5-13-301 is the primary offense.

The Administrative Office of the Courts reports that for the three year period beginning January 1, 2015, and ending December 31, 2017, there were:

- Four (4) felony convictions for a violation of A.C.A. § 5-71-210, Communicating a false alarm, as currently written.
- One (1) felony conviction for a violation of A.C.A. § 5-17-101, Death threat concerning school employee or student, as currently written.
- One (1) felony conviction for a violation of A.C.A. § 5-38-202, Threatening to cause a catastrophe, as currently written.
- 4,425 felony convictions for a violation of A.C.A. § 5-13-301, Terroristic threatening, as currently written.

**A.C.A. § 5-17-101. Communicating a death threat concerning a school employee or student.**

- (a) A person commits the offense of communicating a death threat concerning a school employee or student if:
- (1) The person communicates to any other person a threat to cause the death of a school employee or student;
  - (2) The threat involves the use of a firearm or other deadly weapon;
  - (3) A reasonable person would believe the person making the threat intends to carry out the threat;
  - (4) The person making the threat purposely engaged in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of the threatened act; and
  - (5) There is a close temporal relationship between the threatened act and the substantial step.
- (b) Conduct is not a substantial step under this section unless the conduct is strongly corroborative of the person's criminal purpose.
- (c) Communicating a death threat concerning a school employee or student is a Class D felony.
- (d) As used in this section, "school" means any:
- (1) Elementary school, junior high school, or high school;
  - (2) Technical institute or post-secondary vocational-technical school; or
  - (3) Two-year or four-year college or university.

History: Acts 2001, No. 1046, §§ 1, 2.

**A.C.A. § 5-38-202. Causing a catastrophe -- Threatening to cause a catastrophe.**

- (a) (1) A person commits the offense of causing a catastrophe if he or she knowingly causes a catastrophe by:
- (A) Explosion;
  - (B) Fire;
  - (C) Flood;
  - (D) Avalanche;
  - (E) Collapse of building;
  - (F) Distribution of a poison, radioactive material, bacteria, or virus; or
  - (G) Another dangerous and difficult to confine force or substance.
- (2) Causing a catastrophe is a Class Y felony.
- (b) (1) A person commits the offense of threatening to cause a catastrophe if he or she:
- (A) Contacts any person, company, corporation, or governmental entity; and
  - (B) Threatens to cause a catastrophe by explosion, fire, flood, avalanche, collapse of building, release of a poison, radioactive material, bacteria, or virus, or another dangerous and difficult to confine force or substance, unless:
    - (i) Paid a sum of money or any type of property; or
    - (ii) The person, company, corporation, or governmental entity performs a requested act.
- (2) Threatening to cause a catastrophe is a Class D felony.
- (c) In addition to any other restitution ordered under § 5-4-205, a court may order that a person who violates this section make restitution to the state or any political subdivision of the state for any cleanup costs associated with the commission of the offense.

History: Acts 1975, No. 280, § 1905; 1983, No. 689, § 1; 1983, No. 815, § 1; A.S.A. 1947, § 41-1905; Acts 2003, No. 1342, § 2.

**A.C.A. § 5-71-210. Communicating a false alarm.**

(a) A person commits the offense of communicating a false alarm if he or she purposely initiates or circulates a report of a present, past, or impending bombing, fire, offense, catastrophe, or other emergency while knowing that the report is false or baseless and knowing that it is likely to:

- (1) Cause action of any sort by an official or volunteer agency organized to deal with emergencies;
- (2) Place any person in fear of physical injury to himself or herself or another person or of damage to his or her property or that of another person; or
- (3) Cause total or partial evacuation of any occupiable structure, vehicle, or vital public facility.

(b) (1) (A) Communicating a false alarm is a Class C felony if physical injury to a person results.

(B) Communicating a false alarm is a Class D felony if:

- (i) Damage to property results; or
- (ii) The false alarm communicates a present or impending bombing and is made to or about a public or private educational institution.

(2)

(A) If there is no resulting physical injury or damage to property, communicating a false alarm is a Class A misdemeanor.

(B) A second or subsequent offense that would otherwise be a Class A misdemeanor is a Class D felony.

(c) In addition to any other restitution ordered under § 5-4-205, the court may order that a person who violates this section make restitution to the State of Arkansas or any of its political subdivisions for any cleanup costs associated with the commission of the offense.

History: Acts 1975, No. 280, § 2911; A.S.A. 1947, § 41-2911; Acts 2001, No. 567, § 1; 2003, No. 1342, § 4.

**A.C.A. § 5-13-301. Terroristic threatening.**

(a) (1) A person commits the offense of terroristic threatening in the first degree if:

(A) With the purpose of terrorizing another person, the person threatens to cause death or serious physical injury or substantial property damage to another person; or

(B) With the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to a teacher or other school employee acting in the line of duty.

(2) Terroristic threatening in the first degree is a Class D felony.

(b)

(1) A person commits the offense of terroristic threatening in the second degree if, with the purpose of terrorizing another person, the person threatens to cause physical injury or property damage to another person.

(2) Terroristic threatening in the second degree is a Class A misdemeanor.

(c) (1) (A) Upon pretrial release of the defendant, a judicial officer shall:

(i) Enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure; and

(ii) Give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order under subdivision (c)(1)(A) of this section remains in effect during the pendency of any appeal of a conviction under this section.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order under subdivision (c)(1)(A) of this section to the victim and arresting agency without unnecessary delay.

(2) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the cause, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

History: Acts 1975, No. 280, § 1608; 1979, No. 753, § 1; A.S.A. 1947, § 41-1608; Acts 1993, No. 379, § 4; 1993, No. 388, § 4; 1993, No. 1189, § 3; 1995, No. 1302, § 2; 2017, No. 472, § 18.