



## ARKANSAS SENTENCING COMMISSION

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### Impact Assessment for HB1588 Sponsored by Representative Gazaway

**Subtitle** TO AMEND THE OFFENSE OF BATTERY IN THE SECOND DEGREE AND DOMESTIC BATTERING IN THE SECOND DEGREE.

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill creates new courses of conduct by which a person can commit the offenses of Battery in the second degree and Domestic battering in the second degree. Available data does not sufficiently indicate the circumstances surrounding Battery or Domestic battering offenses. For this reason, the projected impact of the proposed bill cannot be determined.

**Change from Current Law**<sup>2</sup> Amends Arkansas Code Annotated § 5-13-202, Battery in the second degree, to create a new course of conduct by which a person can commit the offense of Battery in the second degree, a Class D felony. Under the proposed bill, a person commits the offense of battery in the second degree if he or she recklessly causes serious physical injury to another person who is four (4) years of age or younger. Under current law, this conduct is punishable under A.C.A. § 5-13-203, Battery in the third degree, a Class A misdemeanor. [See attached for a complete reprint of both code sections.]

The proposed bill also amends A.C.A. § 5-26-304, Domestic battering in the second degree, to create a new course of conduct by which a person can commit the offense of domestic battering in the second degree. Under the proposed bill, a person commits the offense of Domestic battering in the second degree if he or she recklessly causes serious physical injury to family or household member who is four (4) years of age or younger. Under current law and the proposed bill, domestic battering in the second degree is a Class B felony if committed against a person the defendant knew or should have known was pregnant or if the conviction is a subsequent offense and a Class C felony if otherwise committed. Under current law, this conduct is punishable under A.C.A. § 5-13-203, Battery in the third degree, a Class D felony if committed against a person the defendant knew or should have known was pregnant or if the conviction is a subsequent offense, or a Class A misdemeanor if otherwise committed. [See attached for a complete reprint of both code sections.]

**Impact Information** The proposed bill creates new courses of conduct by which a person can commit the offenses of Battery in the second degree and Domestic battering in the second degree. The conduct added to these offenses is already punishable under existing law at lower penalty levels. Available data for these offenses does not sufficiently distinguish between victims or other circumstances surrounding the offense. [See attached for a complete reprint of relevant code sections.] For this reason, the projected impact of the proposed bill cannot be determined. The

<sup>1</sup> This impact assessment was prepared 3/8/2021 11:08 AM 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 Corrections 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

following data is for informational purposes only.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning January 1, 2017, and ending December 31, 2019, there were 723 convictions for a violation of A.C.A. § 5-13-203, Battery in the third degree, a Class A misdemeanor. For the same three (3) year period, the AOC reports 1322 convictions for a violation of A.C.A. § 5-26-305 (b)(1), Domestic battering in the third degree, a Class A misdemeanor and 843 convictions for a violation of A.C.A. § 5-26-305 (b)(2), Domestic battering in the third degree, a Class D felony.

It is important to note that misdemeanors are often disposed of in District Court, and that not all District courts report data to the AOC. For this reason, the number of misdemeanor convictions is likely higher than reported.

The Division of Correction (ADC) reports 122 inmates serving a term of incarceration for a violation of A.C.A. § 5-26-305 (b)(2), Domestic battering in the third degree, a Class D felony. Thirty-one (31) of these inmates are serving a term of incarceration for which A.C.A. § 5-26-305 (b)(2), is the most serious offense.

**A.C.A. § 5-13-202. Battery in the second degree.**

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

(1) With the purpose of causing physical injury to another person, the person causes serious physical injury to another person;

(2) With the purpose of causing physical injury to another person, the person causes physical injury to another person by means of a deadly weapon other than a firearm;

(3) The person recklessly causes serious physical injury to another person:

(A) By means of a deadly weapon; or

(B) While operating or in actual physical control of a motor vehicle or motorboat if at the time:

(i) The person is intoxicated; or

(ii) 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; or

(4) The person knowingly, without legal justification, causes physical injury to or incapacitates a person he or she knows to be:

(A)

(i) A law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility while the law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility is acting in the line of duty.

(ii) As used in this subdivision (a)(4)(A):

(a)

(1) "Code enforcement officer" means an individual charged with the duty of enforcing a municipal code, municipal ordinance, or municipal regulation as defined by a municipal code, municipal ordinance, or municipal regulation.

(2) "Code enforcement officer" includes a municipal animal control officer; and

(b) "Employee of a correctional facility" includes a person working under a professional services contract with the Division of Correction, the Division of Community Correction, or the Division of Youth Services;

(B) A teacher or other school employee while acting in the course of employment;

(C) An individual sixty (60) years of age or older or twelve (12) years of age or younger;

(D) An officer or employee of the state while the officer or employee of the state is acting in the performance of his or her lawful duty;

(E) While performing medical treatment or emergency medical services or while in the course of other employment relating to his or her medical training:

(i) A physician;

(ii) A person licensed as emergency medical services personnel, as defined in § 20-13-202;

(iii) A licensed or certified healthcare professional; or

(iv) Any other healthcare provider; or

(F) An individual who is incompetent, as defined in § 5-25-101.

(b)

(1) Battery in the second degree under subdivision (a)(3)(B) of this section is a Class C felony.

(2) Otherwise, battery in the second degree is a Class D felony.

(c) As used in this section, "motorboat" means the same as defined in § 5-65-102.

**History**

Acts 1975, No. 280, § 1602; 1981, No. 877, § 1; 1983, No. 12, § 1; A.S.A. 1947, § 41-1602; Acts 1995, No. 1173, § 1; 1995, No. 1305, § 2; 1995, No. 1338, § 1; 1997, No. 207, § 1; 1997, No. 878, § 1; 1999, No. 389, § 1; 2003, No. 66, § 1; 2007, No. 827, § 27; 2009, No. 344, § 1; 2009, No. 689, § 1; 2011, No. 1120, § 6; 2011, No. 1168, § 1; 2013, No. 429, § 1; 2015, No. 104, §§ 1, 2; 2017, No. 333, § 1; 2019, No. 783, § 1; 2019, No. 910, § 667.

**A.C.A. § 5-13-203. Battery in the third degree.**

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

- (1) With the purpose of causing physical injury to another person, the person causes physical injury to any person;
- (2) The person recklessly causes physical injury to another person;
- (3) The person negligently causes physical injury to another person by means of a deadly weapon; or
- (4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance.

(b) Battery in the third degree is a Class A misdemeanor.

History

Acts 1975, No. 280, § 1603; A.S.A. 1947, § 41-1603.

**A.C.A. § 5-26-304. Domestic battering in the second degree.**

(a) A person commits domestic battering in the second degree if:

- (1) With the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member;
- (2) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a deadly weapon;
- (3) The person recklessly causes serious physical injury to a family or household member by means of a deadly weapon; or
- (4) The person knowingly causes physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger.

(b)

(1) Domestic battering in the second degree is a Class C felony.

(2) However, domestic battering in the second degree is a Class B felony if:

- (A) Committed against a woman the person knew or should have known was pregnant;
- (B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the second degree:
  - (i) Domestic battering in the first degree, § 5-26-303;
  - (ii) Domestic battering in the second degree;
  - (iii) Domestic battering in the third degree, § 5-26-305; or
  - (iv) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction; or
- (C) The person committed two (2) or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten (10) years of the offense of domestic battering in the second degree.

History

Acts 1979, No. 396, § 2; A.S.A. 1947, § 41-1654; Acts 1995, No. 1291, § 2; 1999, No. 1365, § 2; 2001, No. 1553, § 9; 2003, No. 944, § 2; 2003, No. 1079, § 1; 2005, No. 1994, § 481; 2009, No. 194, § 2; 2013, No. 417, § 2.

**A.C.A. § 5-26-305. Domestic battering in the third degree.**

- (a) A person commits domestic battering in the third degree if:
- (1) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member;
  - (2) The person recklessly causes physical injury to a family or household member;
  - (3) The person negligently causes physical injury to a family or household member by means of a deadly weapon; or
  - (4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to a family or household member by administering to the family or household member, without the family or household member's consent, any drug or other substance.
- (b)
- (1) Domestic battering in the third degree is a Class A misdemeanor.
  - (2) However, domestic battering in the third degree is a Class D felony if:
    - (A) Committed against a woman the person knew or should have known was pregnant;
    - (B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the third degree:
      - (i) Domestic battering in the first degree, § 5-26-303;
      - (ii) Domestic battering in the second degree, § 5-26-304;
      - (iii) Domestic battering in the third degree;
      - (iv) Aggravated assault on a family or household member, § 5-26-306; or
      - (v) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction; or
    - (C) The person committed two (2) or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten (10) years of the offense of domestic battering in the third degree.

**History**

Acts 1979, No. 396, § 3; A.S.A. 1947, § 41-1655; Acts 1995, No. 1291, § 3; 1999, No. 1365, § 3; 2001, No. 1553, § 10; 2003, No. 944, § 3; 2003, No. 1079, § 1; 2005, No. 1994, § 481; 2009, No. 333, § 1; 2013, No. 417, § 3; 2015, No. 1155, § 5.