



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for SB177 Sponsored by Senator Clark

Subtitle CONCERNING UNLAWFUL IMPAIRMENT OF OR DISRUPTION TO THE OPERATION OF A VITAL PUBLIC FACILITY OR TO ESSENTIAL INFRASTRUCTURE.

Impact Summary¹ Cannot be determined. The proposed bill creates a new criminal offense for which the likely number of occurrences is unknown. For this reason, the projected impact of the proposed bill cannot be determined.

Change from Current Law² Amends A.C.A. § 5-38-205, Impairing *or disrupting* the operation of a vital public facility *or essential infrastructure*. [New language indicated with italics.] Under the proposed bill, a person commits the offense of impairing *or disrupting* the operation of a vital public facility *or essential infrastructure* if, having no reasonable grounds to believe he or she has a right to do so, the person knowingly causes a substantial interruption, *obstruction, damage, disruption, impediment*, or impairment to the operation of a vital public facility *or essential infrastructure* by (1) damaging the property of another person *or a public utility*, (2) incapacitating the operator of a vital public facility *or essential infrastructure*, (3) *disrupting public utility service to a vital public facility or essential infrastructure*, or (4) engaging in a fight, violent or tumultuous behavior, or other conduct that causes a substantial *interruption, disruption, obstruction, damage, impairment*, or impediment to the operation of a vital public facility *or essential infrastructure*. The below chart details the penalties for the offense under current law and the proposed bill.

A.C.A.	Conduct Provision	Penalty under current law	Penalty under proposed bill
§ 5-38-205 (a)(1) & (b)(1)	Damaging property of another person <i>or a public utility</i>	Class C felony	Class C felony
§ 5-38-205 (a)(1) & (b)(3)	Damaging property of another person <i>or a public utility- death results from conduct</i>	Class C felony	Class B felony
§ 5-38-205 (a)(2) & (b)(1)	Incapacitating the operator of a vital public facility <i>or essential infrastructure</i>	Class C felony	Class C felony
§ 5-38-205 (a)(2) & (b)(3)	Incapacitating the operator of a vital public facility <i>or essential infrastructure- death results from conduct</i>	Class C felony	Class B felony
§ 5-38-205 (a)(3) & (b)(1)	<i>Disrupting public utility service to a vital public facility or essential infrastructure</i>	N/A	Class C felony
§ 5-38-205 (a)(3) & (b)(3)	<i>Disrupting public utility service to a vital public facility or essential infrastructure- death results from conduct</i>	N/A	Class B felony
§ 5-38-205 (a)(4) & (b)(1)	Engaging in a fight, violent or tumultuous behavior, or any other conduct that causes a substantial <i>interruption, disruption, obstruction, damage, impairment</i> , or impediment to the operation of a vital public facility <i>or essential infrastructure</i> .	Class A misdemeanor	Class A misdemeanor
§ 5-38-205 (a)(4) & (b)(3)	Engaging in a fight, violent or tumultuous behavior, or any other conduct that causes a substantial <i>interruption, disruption, obstruction, damage, impairment</i> , or impediment to the operation of a vital public facility <i>or essential infrastructure- death results from conduct</i>	Class A misdemeanor	Class B felony

¹ This impact assessment was prepared 2/2/2021 4:21 PM 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

² Standard punishment ranges:

Class Y 10-40 years or life
6-30 years; up to \$15,000
B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors

Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

The proposed bill also amends A.C.A. § 5-38-301, Arson, to modify two (2) courses of conduct by which a person can commit the offense of Arson. Under the proposed bill, a person commits the offense of Arson if he or she (1) starts a fire or causes an explosion with the purposes of destroying or otherwise damaging a vital public facility *or essential infrastructure*, 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 vital public facility *or essential infrastructure*. [New language indicated with italics.] Under current law and the proposed bill, the penalty for committing the offense of Arson varies based on the value of the property damage and the circumstances surrounding the offense. The table below sets out the penalties for Arson. [See attached complete reprint of current code section.]

Penalty	Conduct
Class A misdemeanor	Property sustains less than \$500 worth of damage
Class D felony	Property sustains at least \$500, but less than \$2,500 worth of damage
Class C felony	Property sustains at least \$2,500 but less than \$5,000 worth of damage
Class B felony	Property sustains at least \$5,000 but less than \$15,000 worth of damage OR Property damaged is real property being used for the commercial growth of timber or other agricultural product which is destroyed or commercially nonviable and valued at more than \$5,000.
Class A felony	Property sustains at least \$15,000 but less than \$100,000 worth of damage
Class Y felony	Property sustains at least \$100,000 worth of damage

The proposed bill also amends A.C.A. § 5-38-302, Reckless burning, to modify one course of conduct by which a person can commit the offense of Reckless burning. Under the proposed bill, a person commits the offense of reckless burning if the person purposely starts a fire or causes an explosion, whether on his or her own property or the property of another person and thereby recklessly destroys or causes substantial damage to a vital public facility *or essential infrastructure*. [New language indicated with italics.] Under current law and the proposed bill, Reckless burning is a Class D felony.

The proposed bill also amends the definition of “vital public facility” to include “essential infrastructure.”

Impact Information The proposed bill creates a new criminal offense for which the likely number of occurrences is unknown. For this reason, the projected impact of the proposed bill cannot be determined. The data below 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 110 felony convictions for a violation of A.C.A. § 5-38-205, Impairing the operation of a vital public facility, a Class C felony, as currently written. For the same three (3) year period, there were 134 convictions covering all felony occurrences of A.C.A. § 5-38-301, Arson, and 27 convictions for a violation of A.C.A. § 5-38-302, Reckless burning, a Class D felony, as currently written.

The Arkansas Division of Correction (ADC) reports 41 inmates currently serving a term of incarceration for a violation of A.C.A. § 5-38-205, Impairing the operation of a vital public facility, a Class C felony, as currently written. Twelve (12) of these offenders are serving a sentence for which A.C.A. § 5-38-205, Impairing the operation of a vital public facility, is the most serious offense.

The ADC reports ninety (90) inmates currently serving a term of incarceration for a violation of A.C.A. § 5-38-301, Arson, as currently written. Sixty-six (66) of these offenders are serving a sentence for which A.C.A. § 5-38-301, Arson, is the most serious offense. These inmate numbers cover all felony classes of Arson.

The ADC reports four (4) inmates currently serving a term of incarceration for a violation of A.C.A. § 5-38-302, Reckless burning, a Class D felony, as currently written. None of these offenders are serving a sentence for which A.C.A. § 5-38-302, Reckless burning, is the most serious offense.

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;
 - (F)** Any public building or occupiable structure that is either owned or leased by the state or any political subdivision of the state; or
 - (G)** An area of real property being used for the commercial growth of timber or other agricultural product, if:
 - (i)** Timber or other agricultural product is destroyed or made commercially nonviable; and
 - (ii)** The value of the destroyed or commercially nonviable timber or other agricultural product is more than five thousand dollars (\$5,000); 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:
 - (A)** The property sustains at least five thousand dollars (\$5,000) but less than fifteen thousand dollars (\$15,000) worth of damage; or
 - (B)** The arson is under subdivision (a)(1)(G) of this section;
- (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; 2017, No. 630, § 2.