



## ARKANSAS SENTENCING COMMISSION

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### Impact Assessment for SB3 Sponsored by Senator Hendren

**Subtitle** CREATING A SENTENCE ENHANCEMENT FOR CERTAIN OFFENSES COMMITTED AGAINST A PERSON DUE TO THE PERSON'S ATTRIBUTES; AND TO REQUIRE AN ANNUAL REPORT CONCERNING THE COMMISSION OF HATE CRIMES IN ARKANSAS.

**Impact Summary**<sup>1</sup> Minimal, affecting fewer than ten (10) offenders per year. The Federal Bureau of Investigation reports nine (9) occurrences of bias-motivated crimes in the State of Arkansas in 2019. While this likely does not encompass all occurrences of bias-motivated crimes, convictions for similar enhancements are historically uncommon. For these reasons, this proposed bill is projected to have a minimal impact on correctional resources.

**Change from Current Law**<sup>2</sup> Amends Title 5 of the Arkansas Code Annotated to (1) create a sentence enhancement for certain offenses committed against a person due to the person's attributes, (2) create an additional course of conduct by which a person can commit the offense of frivolous, groundless, or malicious prosecutions, (3) create an additional course of conduct by which a person can commit the offense of filing a false report with a law enforcement agency, and (4) require centralized data collection and analysis regarding hate crimes. For purposes of this impact assessment, only those aspects of the bill which amend criminal penalties will be considered.

The proposed bill creates A.C.A. § 5-4-708, Enhanced penalties for offenses committed due to the victim's race, color, religion, ethnicity, ancestry, national origin, homelessness, gender identity, sexual orientation, sex, disability, or service in United State Armed Forces. Under the proposed bill, a defendant is subject to a twenty percent (20%) enhancement of his or her term of imprisonment, fine, and term of probation or suspended imposition of sentence if the finder of fact determines beyond a reasonable doubt that the defendant purposely selected the victim of the offense due to the victim's ancestry, color, current or former service in the U.S. Armed Forces, disability, ethnicity, gender identity, homelessness, national origin, race, religion, sex, or sexual orientation. The enhancement cannot be applied if the victim is selected based on sex and the offense is one of the following:

- Sexual offenses found at A.C.A. § 5-14-101 et seq.
- Offenses involving the family found at A.C.A. § 5-26-201 et seq.
- Offenses involving domestic battering and assault found at A.C.A. § 5-26-301 et seq.
- Offenses involving nonsupport found at A.C.A. § 5-26-401 et seq.
- Offenses involving custody and visitation found at A.C.A. § 5-26-501 et seq.

<sup>1</sup> This impact assessment was prepared 4/6/2021 1:29 PM by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the 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 costs; and "major" = would require budgetary increases for ADC costs and construction costs for additional beds.

<sup>2</sup> Standard punishment ranges:

Class Y 10-40 years or life  
Class A 6-30 years; up to \$15,000  
Class 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 modifies Arkansas Code § 5-53-131, Frivolous, groundless, or malicious prosecutions, to add a new course of conduct by which a person can commit the offense. Under the proposed bill, a person who knowingly brings or aids and encourages another to bring frivolous, groundless, or malicious prosecution that seeks a sentence enhancement pursuant to the enhancement proposed by this bill is guilty of a Class C felony. Under current law, frivolous, groundless, or malicious prosecution is a Class A misdemeanor.

The proposed bill also modifies Arkansas Code § 5-54-122, Filing false report with a law enforcement agency, to add a new course of conduct by which a person can commit the offense. Under the proposed bill, a person who files a report with any law enforcement agency or prosecuting attorney's office of any alleged criminal wrongdoing on the part of another person knowing that report is false is guilty of a Class D felony if the false report alleges that the person who committed an offense purposely selected the victim of the offense for a reason subject to enhancement under this proposed bill. Under current law, Filing a false report with a law enforcement agency is either a Class D felony or a Class A misdemeanor, depending on the circumstances surrounding the false report.

**Impact Information** The proposed bill creates a new enhancement and new courses of conduct for committing the offenses of (i) Frivolous, groundless, or malicious prosecutions and (ii) Filing false report with a law enforcement agency. Data is unavailable as to the likely number of occurrences of the new courses of conduct. Further, the proposed enhancement is based on the length of the underlying sentence, making it difficult to ascertain what the increase in length of sentence would be. However, the Federal Bureau of Investigation (FBI) reports a low number of bias-motivated incidents and other provisions enhancing penalties for bias-motivated offenses have not resulted in a meaningful impact on correctional resources. For these reasons, the proposed bill is projected to have a minimal impact on correctional resources.

The FBI reports that in calendar year 2019, there were nine (9) bias motivated incidents reported in Arkansas. It is important to note that not all law enforcement agencies report to the FBI. In Arkansas, 278 agencies covering a population of 2,813,297 participated in this incident reporting.

Under current law, a violation of A.C.A. § 5-53-131, Frivolous, groundless, or malicious prosecutions, is a Class A misdemeanor. Conviction data on misdemeanors is not uniformly reported to the Administrative Office of the Courts. Data does not exist as to the likely number of occurrences of the specific course of conduct contemplated in the proposed bill. However, the proposed bill only increases the penalty for some occurrences of this offense.

The Division of Correction (ADC) reports sixty-three (63) inmates currently serving a term of incarceration for a violation of A.C.A. § 5-54-122, Filing a false report, as currently written. One (1) of these offenders is serving a sentence for which A.C.A. § 5-54-122 is the most serious offense.

The AOC reports that for the three (3) year period beginning January 1, 2017 and ending December 31, 2019, there were 115 felony convictions for a violation of A.C.A. § 5-54-122, Filing false report, as currently written.

There are currently three (3) provisions in the Arkansas Code which increase the punishment for offenses motivated by bias against the victim. The ADC reports that there are currently no inmates serving a term of incarceration for any of these enhancements. The below table provides more information on these existing enhancements.

A.C.A.	Title	Length of Enhancement
§ 5-4-704	Sentence enhancement for offense targeting current or former law enforcement officer, first responder or family member of current or former law enforcement officer or first responder.	6 months to 2 years imprisonment if Class C, D, or U felony 2 to 10 years imprisonment if Class Y, A, or B felony
§ 5-4-705	Sentence enhancement for offense targeting railroad or public transit employee.	6 months to 2 years imprisonment if Class C, D, or U felony 2 to 10 years imprisonment if Class Y, A, or B felony
§ 5-4-707	Additional term of imprisonment for offense constituting violence against church or other place of worship.	1 to 10 years imprisonment. Only applies if “serious felony involving violence” Must be consecutive to underlying sentence. Enhanced portion of sentence not eligible for parole.