



# ARKANSAS SENTENCING COMMISSION

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## Impact Assessment for HB1474 Sponsored by Representative Gazaway

**Subtitle** TO AMEND THE ARKANSAS CRIMINAL CODE; AND TO ADD AN UNDERGROUND STORAGE FACILITY TO THE DEFINITION OF CRITICAL INFRASTRUCTURE.

**Impact Summary**<sup>1</sup> Cannot be determined. The proposed bill amends courses of conduct related to critical infrastructure for which sufficient data to ascertain the number of new convictions is unavailable.

**Change from Current Law**<sup>2</sup> Amends Arkansas Code Annotated § 5-38-101, Definitions. Current law designates certain facilities that exclude unauthorized access as “critical infrastructure”. Under the proposed bill, A.C.A. § 5-38-101(2) is amended to include *an underground gas storage facility* to the definition of “critical infrastructure”. [new language is indicated by *italics*]. Critical infrastructure is referenced as an element of the offense in:

- A.C.A. § 5-38-203(b)(4)(B), Criminal mischief in the first degree, a Class B felony.
- A.C.A. § 5-39-203 (a) & (b)(1)(B), Criminal trespass, a Class D felony.
- A.C.A. § 5-39-305 (a) & (b)(1)(B) Criminal trespass on premises located in unincorporated area, a Class D felony.

**Impact Information:** The definition change in the proposed bill amends elements of various criminal offenses. Available data of reported convictions for the offenses as currently written is not sufficiently specific to determine a projected impact. For this reason, the projected impact of the proposed bill cannot be determined. The following data is provided for informational purposes only.

The Administrative Office of the Courts (AOC) reports the following for the three (3) year period beginning on 1/1/2020 and ending on 12/31/2022, and the Division of Correction (ADC) reports the following as of December 2, 2022:

A.C.A.	# of felony convictions	# offenders incarcerated	# offenders incarcerated for which this is the most serious offense
§ 5-38-203 (b)(4)(B) Criminal mischief 1 <sup>st</sup> Degree.	64	17	8
§ 5-39-203 (a)(3) & (b)(1)(B), Criminal trespass.	23	0	0
§ 5-39-305 (a) & (b)(1)(B) Criminal trespass on premises located in unincorporated area.	0	0	0

<sup>1</sup> This impact assessment was prepared 2/23/2023 6:53 AM 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

**A.C.A. § 5-38-203. Criminal mischief in the first degree.**

(a) A person commits the offense of criminal mischief in the first degree if he or she purposely and without legal justification destroys or causes damage to any:

- (1) Property of another person;
- (2) Property, whether his or her own or the property of another person, for the purpose of collecting any insurance for the property; or
- (3) Critical infrastructure.

(b) Criminal mischief in the first degree is a:

- (1) Class A misdemeanor if the amount of actual damage is one thousand dollars (\$1,000) or less;
- (2) Class D felony if the amount of actual damage is more than one thousand dollars (\$1,000) but five thousand dollars (\$5,000) or less;
- (3) Class C felony if the amount of actual damage is more than five thousand dollars (\$5,000) but less than twenty-five thousand dollars (\$25,000); or
- (4) Class B felony if:
  - (A) The amount of actual damage is twenty-five thousand dollars (\$25,000) or more; or
  - (B) The property is critical infrastructure.

(c) In an action under this section involving cutting and removing timber from the property of another person:

- (1) The following create a presumption of a purpose to commit the offense of criminal mischief in the first degree:

- (A) The failure to obtain the survey as required by § 15-32-101; or
- (B) The purposeful misrepresentation of the ownership or origin of the timber; and
- (2)

(A) There is imposed in addition to a penalty in subsection (b) of this section a fine of not more than two (2) times the value of the timber destroyed or damaged.

(B) However, in addition to subdivision (c)(2)(A) of this section, the court may require the defendant to make restitution to the owner of the timber.

(d) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the damage to property involved the removal of nonferrous metal, as it is defined in § 17-44-101.

(e) If the property destroyed or damaged under this section was a residential mailbox or other container that the defendant knew or reasonably should have known was used for the receipt or deposit of United States mail or if the property was damaged by painting or other permanent application of graffiti, the court shall include as part of the sentence:

- (1) An order of restitution for property damage or loss incurred as a result of the offense; and
- (2) An additional punishment of at least twenty-five (25) hours of community service.

**A.C.A. § 5-39-203. Criminal trespass.**

(a) A person commits criminal trespass if he or she purposely enters or remains unlawfully in or upon:

- (1) A vehicle of another person;
- (2) The premises owned or leased by another person; or

- (3) Critical infrastructure.
- (b) Criminal trespass is a:
  - (1) Class D felony if:
    - (A) The person has two (2) or more convictions for a Class A misdemeanor violation of this section or § 5-39-305; or
    - (B) The premises is critical infrastructure;
  - (2) Class A misdemeanor if:
    - (A) At the time of the criminal trespass, the person is in possession of one (1) or more of the following:
      - (i) A killing device;
      - (ii) A harvesting device;
      - (iii) A device primarily used for the location and unearthing of buried or submerged artifacts; or
      - (iv) A tool designed to gain entry into a structure by breaking a lock or breaking through a fence, including without limitation a boltcutter;
    - (B) The person is on premises containing a commercial fishing or fish breeding operation and at that time is in possession of a fishing pole or net designed to capture fish; or
    - (C) The person has a prior conviction for a violation of this section;
  - (3) Class B misdemeanor if:
    - (A) The vehicle or premises involved is an occupiable structure; or
    - (B) The conduct involves the removal of a posted sign, a fence, or a portion of a fence as defined in § 2-39-102; or
  - (4) Class C misdemeanor if otherwise committed.
- (c) It is a defense to prosecution under this section that:
  - (1) The person was a guest or invitee;
  - (2) The person was required to enter upon the premises of the other person for a business reason or for health and safety reasons;
  - (3) The person was authorized by law to enter upon the premises;
  - (4) The privately owned premises were made open to the public; or
  - (5) The person owns or is employed by a person or entity that owns property adjoining the premises and is traveling over the premises with good faith or for a legitimate reason.
- (d) This section does not apply to the following persons who are acting in the line of duty or within the scope of their employment:
  - (1) A law enforcement officer;
  - (2) A firefighter;
  - (3) An emergency first responder;
  - (4) An employee of a state agency, court, or school who is tasked with monitoring, supervising, or making direct contact with a minor or the parents of a minor concerning the well-being of the minor; or
  - (5) An employee of a federal, state, or local agency, commission, board, political subdivision, school district, or municipality who has entered onto or remains on the premises for a purpose directly relating to the employee's employment with the federal, state, or local agency, commission, board, political subdivision, school district, or municipality.
- (e)
  - (1) It is an affirmative defense to prosecution under this section if the person who enters the premises of another person is:

(A) Temporarily on the premises of the other person for the sole purpose of recovering livestock, a dog, or any other domesticated animal; and

(B) Either:

(i) The owner of the livestock, dog, or other domesticated animal; or

(ii) An employee or agent of the owner of the livestock, dog, or other domesticated animal.

(2) A person who enters the premises of another person as described in subdivision (e)(1) of this section is subject to civil liability for any property damage that occurs in the course of recovering the livestock, dog, or other domesticated animal.

(f) A person aggrieved by a violation of this section is granted a private cause of action against the person who violated this section and is entitled to recover:

(1) Actual damages caused by the violation;

(2) Reasonable attorney's fees; and

(3) Punitive damages.

**A.C.A. § 5-39-305. Criminal trespass on premises located in unincorporated area.**

(a)

(1) A person shall not purposely enter without written permission of the owner or lessee upon another person's premises located outside the boundary of any city or town if those premises are:

(A) Lawfully posted;

(B) Crop land or timber land;

(C) Enclosed with a fence sufficient under § 2-39-101 et seq.; or

(D) Critical infrastructure.

(2) The posting of premises is not a requirement under this section.

(b) Criminal trespass on premises located in an unincorporated area is a:

(1) Class D felony if:

(A) The person has two (2) or more convictions for a Class A misdemeanor violation of this section or § 5-39-203; or

(B) The premises is critical infrastructure;

(2) Class A misdemeanor if:

(A) At the time of the criminal trespass on premises located in an unincorporated area, the person is in possession of one (1) or more of the following:

(i) A killing device;

(ii) A harvesting device;

(iii) A device primarily used for the location and unearthing of buried or submerged artifacts; or

(iv) A tool designed to gain entry into a structure by breaking a lock or breaking through a fence, including without limitation a boltcutter;

(B) The person is on premises containing a commercial fishing or fish breeding operation and at that time is in possession of a fishing pole or net designed to capture fish; or

(C) The person has a prior conviction for a violation of this section;

(3) Class B misdemeanor if:

- (A) The premises involved is an occupiable structure; or
- (B) The conduct involves the removal of a posted sign, a fence, or a portion of a fence as defined in § 2-39-102; or
- (4) Violation with a fine not to exceed one hundred dollars (\$100) if otherwise committed.
- (c) It is an affirmative defense to a prosecution that:
  - (1) The person was a guest or invitee;
  - (2) The person was required to enter upon the premises of the other person for a business reason or for health and safety reasons;
  - (3) The person was authorized by law to enter upon the premises;
  - (4) The privately owned premises were made open to the public; or
  - (5) The person owns or is employed by a person or entity that owns property adjoining the premises and is traveling over the premises with good faith or for a legitimate reason.
- (d) This section does not apply to:
  - (1) Public land;
  - (2) A law enforcement or wildlife officer acting in the line of duty; or
  - (3) The following persons who are acting in the line of duty or within the scope of their employment:
    - (A) A law enforcement officer;
    - (B) A firefighter;
    - (C) An emergency first responder;
    - (D) An employee of a state agency, court, or school who is tasked with monitoring, supervising, or making direct contact with a minor or the parents of a minor concerning the well-being of the minor; or
    - (E) An employee of a federal, state, or local agency, commission, board, political subdivision, school district, or municipality who has entered onto or remains on the premises for a purpose directly relating to the employee's employment with the federal, state, or local agency, commission, board, political subdivision, school district, or municipality.
- (e)
  - (1) It is an affirmative defense to prosecution under this section if the person who enters the premises of another person is:
    - (A) Temporarily on the premises of the other person for the sole purpose of recovering livestock, a dog, or any other domesticated animal; and
    - (B) Either:
      - (i) The owner of the livestock, dog, or other domesticated animal; or
      - (ii) An employee or agent of the owner of the livestock, dog, or other domesticated animal.
  - (2) A person who enters the premises of another person as described in subdivision (e)(1) of this section is subject to civil liability for any property damage that occurs in the course of recovering the livestock, dog, or other domesticated animal.
- (f) This section does not repeal any law concerning posting of land or trespass.