



## ARKANSAS SENTENCING COMMISSION

1302 Pike Avenue, Suite E • North Little Rock, AR 72114  
Phone: (501) 682-5001 • Fax: (501) 682-5018

### Impact Assessment for SB622 Sponsored by Senator Hickey

**Subtitle** DELAYING RELEASE FROM PRISON FOR CERTAIN OFFENDERS UNTIL THE OFFENDER HAS SERVED AT LEAST EIGHTY PERCENT (80%) OF HIS OR HER SENTENCE; CREATING PENALTIES FOR FALSE REPORTING TO LAW ENFORCEMENT; AND CREATING A REGISTRY.

**Impact Summary**<sup>1</sup> Cannot be determined. Data is unavailable as to the number of occurrences of the new courses of conduct or the number of offenders who would be impacted by the proposed delayed release mechanism. For this reason, the impact of the proposed bill cannot be determined.

**Change from Current Law**<sup>2</sup> Amends Title 5 of the Arkansas Code Annotated to (1) create provisions for delayed release of certain offenders, (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 a registry of certain sentencing orders. For purposes of this impact assessment, only those aspects of the bill which amend criminal penalties are considered.

The proposed bill creates A.C.A. § 5-4-405, Delayed release for certain offenders. Under the proposed bill, a person who commits a serious felony involving violence is eligible for parole only after serving at least eighty percent (80%) of his or her sentence if the state proves beyond a reasonable doubt that the person committed a serious felony involving violence under an aggravating circumstance. Aggravating circumstance means a defendant purposely selected the victim because the victim was a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics. The following offenses are considered a serious felony involving violence:

- Murder in the first degree, A.C.A. § 5-10-102;
- Murder in the second degree, A.C.A. § 5-10-103;
- Battery in the first degree, A.C.A. § 5-13-201;
- Aggravated assault, A.C.A. § 5-13-204;
- Terroristic threatening, A.C.A. § 5-13-301, if a felony offense;
- Terroristic Act, A.C.A. § 5-13-310;
- Arson, A.C.A. § 5-38-301;
- Unlawful discharge of a firearm from a vehicle, A.C.A. § 5-74-107; and
- An attempt, a solicitation, or a conspiracy to commit one of these of offenses if the attempt, solicitation, or conspiracy itself is a felony.

<sup>1</sup> This impact assessment was prepared 4/5/2021 1:09 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. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for inmate costs; and “major” = would require budgetary increases for inmate costs and construction costs for additional beds. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources.

<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

The proposed bill also modifies A.C.A. § 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, any officer or person who knowingly brings or aids and encourages another person to bring frivolous, groundless, or malicious prosecution seeking to subject a person to delayed release pursuant to 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 A.C.A. § 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 another person purposely selected the victim of a crime because the victim was a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics, for purpose of delayed release. 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 mechanism for delayed release and new courses of conduct for committing the offenses of (i) Frivolous, groundless, or malicious prosecutions and (ii) Filing a false report with a law enforcement agency. Data is unavailable as to the potential number of occurrences of the new courses of conduct. Further, an increase in length of stay for an offender sentenced pursuant to A.C.A. § 5-4-405 is likely to impact the correctional resources of the state, however data is unavailable as to the likely number of occurrences in which an offender may be subject to delayed release under the proposed bill. For these reasons, the impact of the proposed bill cannot be determined. The following data is provided for informational purposes only.

The FBI reported that in calendar year 2019, there were nine (9) bias motivated incidents 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.

The proposed bill requires that an offender serve at least eighty percent (80%) of his or her sentence if he or she commits one of the enumerated offenses under aggravating circumstances. The following paragraphs set out the minimum parole eligibility for each of the offenses considered by the proposed bill. Additionally, some offenses will be designated with an asterisks [\*]. Offenders convicted of these felonies involving violence must serve 100% of their sentence if they had a prior conviction for a felony involving violence. [See attached for a reprint of relevant code provisions.]

Under current law, an offender is eligible for parole after serving a minimum of 70% of his or her sentence for:

- A.C.A. § 5-10-102, Murder in the first degree\*.

An offender is eligible for parole after serving a minimum of ½ of his or her sentence, minus meritorious good time, for the following offenses:

- A.C.A. § 5-10-103, Murder in the second degree\*,
- A.C.A. § 5-13-201, Battery in the first degree\*,
- A.C.A. § 5-13-310, Terroristic Act (Class Y felony)\*,
- A.C.A. § 5-38-301, Arson (Class Y and A felonies), and
- A.C.A. § 5-74-107, Unlawful discharge of firearm from a vehicle\*.

An offender is eligible for parole after serving 1/3 or his or her sentence, minus meritorious good time, for the following offenses:

- A.C.A. § 5-13-204, Aggravated assault,
- A.C.A. § 5-13-301, Terroristic Threatening,
- A.C.A. §5-13-310, Terroristic Act (Class B felony)\*, and
- A.C.A. § 5-38-301, Arson (Class B, C, and D felonies).

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 (AOC). Further, the proposed bill only increases the penalty for some occurrences of this offense. Data does not exist as to the likely number of occurrences of the specific course of conduct contemplated in the proposed bill.

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 a false report, as currently written.

The Arkansas 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 are serving a sentence for which A.C.A. § 5-54-122 is the most serious offense.

**A.C.A. § 16-93-609. Effect of more than one conviction for certain felonies — Definition.**

(a) Any person who commits murder in the first degree, § 5-10-102, rape, § 5-14-103, or aggravated robbery, § 5-12-103, subsequent to March 24, 1983, and who has previously been found guilty of or pleaded guilty or nolo contendere to murder in the first degree, § 5-10-102, rape, § 5-14-103, or aggravated robbery, § 5-12-103, shall not be eligible for release on parole by the Parole Board.

(b)

(1) Any person who commits a violent felony offense or any felony sex offense subsequent to August 13, 2001, and who has previously been found guilty of or pleaded guilty or nolo contendere to any violent felony offense or any felony sex offense shall not be eligible for release on parole by the board.

(2) As used in this subsection, “a violent felony offense or any felony sex offense” means those offenses listed in § 5-4-501(d)(2).

**A.C.A. § 5-4-501. Habitual offenders — Sentencing for felony. [selected sub-section only]**

(d)(2) As used in this subsection, “felony involving violence” means:

(A) Any of the following felonies:

- (i) Murder in the first degree, § 5-10-102;
- (ii) Murder in the second degree, § 5-10-103;
- (iii) Kidnapping, § 5-11-102;
- (iv) Aggravated robbery, § 5-12-103;
- (v) Rape, § 5-14-103;
- (vi) Battery in the first degree, § 5-13-201;
- (vii) Terroristic act, § 5-13-310;
- (viii) Sexual assault in the first degree, § 5-14-124;
- (ix) Sexual assault in the second degree, § 5-14-125;
- (x) Domestic battering in the first degree, § 5-26-303;
- (xi) Residential burglary, § 5-39-201(a);
- (xii) Aggravated residential burglary, § 5-39-204;
- (xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (xiv) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;
- (xv) A felony attempt, solicitation, or conspiracy to commit:
  - (a) Capital murder, § 5-10-101;
  - (b) Murder in the first degree, § 5-10-102;
  - (c) Murder in the second degree, § 5-10-103;
  - (d) Kidnapping, § 5-11-102;
  - (e) Aggravated robbery, § 5-12-103;
  - (f) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
  - (g) Rape, § 5-14-103;
  - (h) Battery in the first degree, § 5-13-201;
  - (i) Domestic battering in the first degree, § 5-26-303;
  - (j) Residential burglary, § 5-39-201(a); or
  - (k) Aggravated residential burglary, § 5-39-204; or
- (xvi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable felony involving violence from another jurisdiction.