



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for HB1536 Sponsored by Representative Vaught

Subtitle TO AMEND THE LAW CONCERNING MURDER IN THE SECOND DEGREE; TO PERMIT AN INTOXICATED DRIVER OR OPERATOR OF AN AIRCRAFT WHO CAUSES THE DEATH OF A PERSON TO BE CHARGED WITH MURDER IN THE SECOND DEGREE; AND TO CREATE VON'S LAW.

Impact Summary¹ Minimal. The proposed bill reclassifies certain conduct currently criminalized as negligent homicide to Murder in the second degree, increasing the felony class from Class B to Class A.

Change from Current Law² Amends Arkansas Code Annotated § 5-10-103, Murder in the second degree, by adding a course of conduct by which a person commits Murder in the second degree. Under the proposed bill, a person commits Murder in the second degree if, *under circumstances manifesting extreme indifference to the value of human life, he or she recklessly causes the death of another person as a result of operating a motor vehicle, an aircraft, or motorboat while intoxicated or if, at the time, there is an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood.* Murder in the second degree is a Class A felony. [New language indicated by *italics*].

Under current law, the conduct is criminalized at the lesser mental state of negligence under A.C.A. § 5-10-105, Negligent homicide, a Class B felony.

Impact Information While the proposed bill adds an additional course of conduct to Murder in the second degree, the conduct is already criminalized at a lower felony class. The proposed bill increasing the felony class for an existing course of conduct is likely to have a minimal impact on correctional resources because of the low number of convictions.

The Administrative Office of the Courts (AOC) reports that for the three (3) year period beginning on 1/1/2020 and ending on 12/31/2022, there were 45 felony convictions of A.C.A. § 5-10-105, Negligent homicide, a Class B felony. The Division of Correction (ADC) reports that as of December 2, 2022, there are currently 80 offenders serving a term of incarceration for a violation of A.C.A. § 5-10-105, Negligent homicide, a Class B felony. Of these, 70 are serving a term of incarceration for which A.C.A. § 5-10-105, Negligent homicide, a Class B felony, is the primary offense.

It is unlikely that all 45 convictions would reach the higher mental state. For this reason, the projected impact of the proposed bill is expected to be minimal.

¹ This impact assessment was prepared 3/14/2023 8:12 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

² 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. § 5-10-105. Negligent homicide.

(a)

(1) A person commits negligent homicide if he or she negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft:

(A) While intoxicated;

(B)

(i) If at that time there is an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood based upon the definition of alcohol concentration in § 5-65-204, as determined by a chemical test of the person's blood, urine, breath, saliva, or other bodily substance.

(ii) The method of the chemical test of the person's blood, urine, saliva, breath, or other bodily substance shall be made in accordance with §§ 5-65-204 and 5-65-206;

(C) While passing a stopped school bus in violation of § 27-51-1004; or

(D) While fatigued.

(2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a Class B felony.

(b)

(1) A person commits negligent homicide if he or she negligently causes the death of another person.

(2) A person who violates subdivision (b)(1) of this section upon conviction is guilty of a Class A misdemeanor.

(c) As used in this section:

(1) "Fatigued" means:

(A) Having been without sleep for a period of twenty-four (24) consecutive hours; or

(B) Having been without sleep for a period of twenty-four (24) consecutive hours and in the state of being asleep; and

(2) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination of alcohol, a controlled substance, or an intoxicant to such a degree that the operator's reactions, motor skills, and judgment are substantially altered and the operator therefore constitutes a clear and substantial danger of physical injury or death to himself or herself or to another person.

History

Acts 1975, No. 280, § 1505; A.S.A. 1947, § 41-1505; Acts 1987, No. 538, § 1; 1999, No. 1112, § 1; 2001, No. 561, § 1; 2005, No. 1004, § 1; 2005, No. 2128, § 2; 2009, No. 650, § 1; 2013, No. 361, § 1; 2013, No. 1296, § 1.