



ARKANSAS SENTENCING COMMISSION

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Impact Assessment for SB238 Sponsored by Senator A. Clark

Subtitle TO CREATE THE OFFENSE OF AGGRAVATED TRESPASS; AND TO MAKE TECHNICAL CORRECTIONS.

Impact Summary¹ Cannot be determined. The proposed bill creates a new offense of Aggravated Criminal Trespass. Data is unavailable as to the number of occurrences by which Criminal trespass is committed with the elements of the new offense. For this reason, the projected impact of the proposed bill cannot be determined.

Change from Current Law² Amends Arkansas Code Annotated § 5-39-203, Criminal trespass, by creating a new offense, *Aggravated criminal trespass*. Under the proposed bill, *a person commits aggravated criminal trespass, if, while intoxicated by alcohol or a controlled substance, he or she purposely enters locked premises owned or leased by another person.* The conduct included in the new offense is currently punishable as misdemeanor criminal trespass. [new language is indicated by *italics*].

The proposed bill also amends other civil and forfeiture provisions regarding Criminal trespass.

Impact Information The proposed bill creates a new offense and increases the penalty for some occurrences of Criminal trespass. The likely number of these occurrences cannot be determined. Available data of reported convictions for the offense 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 that for the three (3) year period beginning on 1/1/2020 and ending on 12/31/2022, there were twenty-four (24) felony convictions for § 5-39-203, Criminal trespass. The Division of Correction (ADC) reports that there are currently zero (0) offenders serving a term of incarceration for § 5-39-203, Criminal trespass.

¹ This impact assessment was prepared 2/21/2023 8:34 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. § 5-39-203. 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.

History

Acts 1975, No. 280, § 2004; A.S.A. 1947, § 41-2004; Acts 2013, No. 960, § 2; 2017, No. 877, § 3; 2021, No. 712, § 4.