



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1117
Sponsored by Representative Lowery,
C. Fite, Hickerson, et al.**

Subtitle CREATING ENHANCED PENALTIES FOR OFFENSES COMMITTED AGAINST AN ELDER PERSON.

Impact Summary¹ Undetermined. Because this is a new enhancement, and a discretionary one, it is not possible to determine how frequently it will be charged.

Change from current law² Amends Arkansas Code § 5-4-701, concerning enhanced penalties for certain offenses, by adding two new definitions: (3) “Elder person” means a person who is sixty-five (65) years or older; and (4) “Property” means severed real property or tangible or intangible personal property, including money or any paper or document that represents or embodies anything of value.

Amends Arkansas Code Title 5, Chapter 4, Subchapter 7, by creating a new section: § 5-4-703, Enhanced penalties for offenses committed against an elder person. A person who commits a felony offense that results in physical injury to or the deprivation of property of an elder person may be subject to an enhanced sentence of an additional term of imprisonment of not less than one (1) year and not greater than ten (10) years.

In order for the enhanced penalty under this section to be imposed, the finder of fact must find that the defendant purposely caused physical injury to the elder person or purposely deprived the elder person of property. The enhanced penalty is in addition to any other sentence or sentence enhancement that may be imposed and consecutive to any other sentence or sentence enhancement imposed. Additionally, a person convicted under this section is ineligible for early release on parole or community correction transfer for the enhancement portion.

¹ This impact assessment was prepared (1/27/2015, 7:33 a.m.) 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 Correction 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:

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|---------|----------------------------|--------------|----------------------------|---------|------------------------------|
| 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 |

Impact Information

The proposed bill creates a new enhancement for felonies committed against an elder person when the offense results in physical injury to or the deprivation of property of that elder person. Data from calendar year 2013 indicates that there were 249 offenders convicted of crimes involving physical injury or deprivation of property of a victim 65 years of age or older. Thirty percent (30%) of these crimes involved physical injury to a victim 65 years of age or older. Seventy percent (70%) of these crimes involved deprivation of property to a victim 65 years of age or older.

For comparison purposes, attached are code provisions which specifically address crimes where physical injury to persons sixty (60) years of age or older has occurred.

A.C.A. § 5-13-202. Battery in the second degree.

(a) A person commits battery in the second degree if:

(1) With the purpose of causing physical injury to another person, the person causes serious physical injury to another person;

(2) With the purpose of causing physical injury to another person, the person causes physical injury to another person by means of a deadly weapon other than a firearm;

(3) The person recklessly causes serious physical injury to another person:

(A) By means of a deadly weapon; or

(B) While operating or in actual physical control of a motor vehicle if at the time:

(i) The person is intoxicated; or

(ii) The alcohol concentration in the person's breath or blood is eight-hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204; or

(4) The person knowingly, without legal justification, causes physical injury to or incapacitates a person he or she knows to be:

(A) (i) A law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility while the law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility is acting in the line of duty.

(ii) As used in this subdivision (a)(4)(A):

(a) (1) "Code enforcement officer" means an individual charged with the duty of enforcing a municipal code, municipal ordinance, or municipal regulation as defined by a municipal code, municipal ordinance, or municipal regulation.

(2) "Code enforcement officer" includes a municipal animal control officer; and

(b) "Employee of a correctional facility" includes a person working under a professional services contract with the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services;

(B) A teacher or other school employee while acting in the course of employment;

(C) An individual sixty (60) years of age or older or twelve (12) years of age or younger;

(D) An officer or employee of the state while the officer or employee of the state is acting in the performance of his or her lawful duty;

(E) While performing medical treatment or emergency medical services or while in the course of other employment relating to his or her medical training:

- (i) A physician;
- (ii) A person licensed as emergency medical services personnel, as defined in § 20-13-202;
- (iii) A licensed or certified health care professional; or
- (iv) Any other health care provider; or

(F) An individual who is incompetent, as defined in § 5-25-101.

(b) Battery in the second degree is a Class D felony.

HISTORY: Acts 1975, No. 280, § 1602; 1981, No. 877, § 1; 1983, No. 12, § 1; A.S.A. 1947, § 41-1602; Acts 1995, No. 1173, § 1; 1995, No. 1305, § 2; 1995, No. 1338, § 1; 1997, No. 207, § 1; 1997, No. 878, § 1; 1999, No. 389, § 1; 2003, No. 66, § 1; 2007, No. 827, § 27; 2009, No. 344, § 1; 2009, No. 689, § 1; 2011, No. 1120, § 6; 2011, No. 1168, § 1; 2013, No. 429, § 1.

A.C.A. § 5-26-303. Domestic battering in the first degree.

(a) A person commits domestic battering in the first degree if:

(1) With the purpose of causing serious physical injury to a family or household member, the person causes serious physical injury to a family or household member by means of a deadly weapon;

(2) With the purpose of seriously and permanently disfiguring a family or household member or of destroying, amputating, or permanently disabling a member or organ of a family or household member's body, the person causes such an injury to a family or household member;

(3) The person causes serious physical injury to a family or household member under circumstances manifesting extreme indifference to the value of human life;

(4) The person knowingly causes serious physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger; or

(5) The person:

(A) Commits any act of domestic battering as defined in § 5-26-304 or § 5-26-305; and

(B) For conduct that occurred within the ten (10) years preceding the commission of the current offense, the person has on two (2) previous occasions been convicted of any act of battery against a family or household member as defined by the laws of this state or by the equivalent laws of any other state or foreign jurisdiction.

(b) (1) Domestic battering in the first degree is a Class B felony.

(2) However, domestic battering in the first degree is a Class A felony upon a conviction under subsection (a) of this section if:

(A) Committed against a woman the person knew or should have known was pregnant; or

(B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the first degree:

(i) Domestic battering in the first degree;

(ii) Domestic battering in the second degree, § 5-26-304;

(iii) Domestic battering in the third degree, § 5-26-305; or

(iv) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction.

HISTORY: Acts 1979, No. 396, § 1; A.S.A. 1947, § 41-1653; Acts 1995, No. 1291, § 1; 1999, No. 1317, § 2; 1999, No. 1365, § 1; 2001, No. 1553, § 8; 2003, No. 944, § 1; 2003, No. 1079, § 1; 2005, No. 1994, § 481; 2007, No. 671, § 1; 2009, No. 194, § 1; 2009, No. 748, § 16; 2011, No. 1120, § 7; 2013, No. 417, § 1.

A.C.A. § 5-26-304. Domestic battering in the second degree.

(a) A person commits domestic battering in the second degree if:

(1) With the purpose of causing physical injury to a family or household member, the person causes serious physical injury to a family or household member;

(2) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member by means of a deadly weapon;

(3) The person recklessly causes serious physical injury to a family or household member by means of a deadly weapon; or

(4) The person knowingly causes physical injury to a family or household member he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger.

(b) (1) Domestic battering in the second degree is a Class C felony.

(2) However, domestic battering in the second degree is a Class B felony if:

(A) Committed against a woman the person knew or should have known was pregnant;

(B) The person committed one (1) or more of the following offenses within five (5) years of the offense of domestic battering in the second degree:

(i) Domestic battering in the first degree, § 5-26-303;

(ii) Domestic battering in the second degree;

(iii) Domestic battering in the third degree, § 5-26-305; or

(iv) A violation of an equivalent penal law of this state or of another state or foreign jurisdiction;
or

(C) The person committed two (2) or more offenses of battery against a family or household member as defined by a law of this state or by an equivalent law of any other state or foreign jurisdiction within ten (10) years of the offense of domestic battering in the second degree.

HISTORY: Acts 1979, No. 396, § 2; A.S.A. 1947, § 41-1654; Acts 1995, No. 1291, § 2; 1999, No. 1365, § 2; 2001, No. 1553, § 9; 2003, No. 944, § 2; 2003, No. 1079, § 1; 2005, No. 1994, § 481; 2009, No. 194, § 2; 2013, No. 417, § 2.