

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
93rd General Assembly  
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As Engrossed: H3/4/21 H3/22/21

# A Bill

HOUSE BILL 1523

*By: Representatives Bentley, M. Berry, Brooks, Brown, Bryant, Carr, C. Cooper, Crawford, Gazaway, McCollum, Milligan, Underwood, Beck, Dotson, McClure, Wing, B. Smith*

*By: Senator G. Stubblefield*

## For An Act To Be Entitled

AN ACT TO BE KNOWN AS THE "ARKANSAS EQUAL JUSTICE UNDER THE LAW ACT OF 2021"; CONCERNING VIOLENT OFFENSES THAT WERE COMMITTED IN ORDER TO PREVENT A PERSON FROM EXERCISING HIS OR HER CONSTITUTIONAL RIGHTS; AND FOR OTHER PURPOSES.

## Subtitle

TO BE KNOWN AS THE "ARKANSAS EQUAL JUSTICE UNDER THE LAW ACT OF 2021".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly to:

(1) Affirm that it is the duty of the General Assembly, as an elected body representing the people of Arkansas, to ensure that all persons are afforded protection under the law and equal justice under the law; and

(2) Ensure that the federal and state constitutional rights afforded all citizens are protected at all costs, including the free speech and free exercise of religion provisions under the First Amendment to the United States Constitution and Arkansas Constitution, Article 2, §§ 6, 24, and 25.

SECTION 2. DO NOT CODIFY. Legislative findings.

(a) The General Assembly finds that throughout the Arkansas Code there



are a number of statutes already in place that protect our most vulnerable and disparate populations.

(b) Some particular examples are as follows:

(1) Section 5-38-301 criminalizes, among other things, arson of dedicated church property used as a place of worship;

(2) Section 5-71-207 criminalizes disorderly conduct including purposely causing public inconvenience, annoyance, or alarm or recklessly creating a risk of public inconvenience, annoyance, or alarm, if the person in a public place mars, defiles, desecrates, or otherwise damages a “religious symbol that is an object of respect by the public or a substantial segment of the public”;

(3) Section 5-71-215 criminalizes, among other things, damages to any place of worship;

(4) Section 6-10-114 prohibits:

(A) Discrimination against a student for race, national origin, or ethnic background by a school board member, administrator, or school employee, and that person’s license may be suspended; and

(B) Authorizing or participating in a discriminatory activity, retaliation for reporting, or allowing students to participate in a discriminatory activity;

(5) Section 6-18-514 prohibits bullying in a public school which includes bullying for “attributes”, “including without limitation race, color, religion, ancestry, national origin, socioeconomic status, academic status, disability, gender, gender identity, physical appearance, health condition, or sexual orientation”;

(6) Section 6-81-606 prohibits discrimination on the basis of race, color, national origin, religion, sex, or area of teacher education in the Teacher Opportunity Program;

(7) Section 16-123-106 under the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., concerns hate offenses and allows civil action for intimidation, harassment, personal violence, and vandalism to real or personal property motivated by racial, religious, or ethnic animosity;

(8) Section 16-123-107 under the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., prohibits discrimination because of race, religion, national origin, gender, or the presence of any sensory, mental, or physical disability;

(9) The Arkansas Fair Housing Act, § 16-123-201 et seq., prohibits misconduct in real estate transactions “on the basis of religion, race, color, national origin, sex, disability, or familial status” and authorizes a civil action for damages and attorney’s fees;

(10) Section 16-123-310 prohibits discrimination in the sale or rental of housing because of race, color, religion, sex, familial status, or national origin;

(11) Section 16-123-348 prohibits willfully injuring, intimidating, or interfering with, or attempting to injure, intimidate, or interfere with, a person because of his or her race, color, religion, sex, disability, familial status, or national origin regarding housing transactions;

(12) Section 16-123-404 prohibits the government from substantially burdening “a person’s exercise of religion”;

(13) Section 21-12-103 authorizes all state agencies to terminate an employee for prohibited discrimination “based upon race, creed, religion, national origin, age, sex, or gender”;

(14) Section 23-66-206 prohibits unfair methods of competition and unfair or deceptive acts or practices, including “refusing to insure or continue to insure an individual or risks solely because of the individual’s race, color, creed, national origin, citizenship, status as a victim of domestic abuse, or sex”; and

(15) Section 23-114-404 prohibits denial of admission to a raffle or a game of bingo because of race, color, creed, religion, national origin, sex, or disability.

SECTION 3. Arkansas Code Title 5, Chapter 4, Subchapter 1, is amended to add an additional section to read as follows:

5-4-110. Prevention of victim’s constitutional rights – Findings required.

(a) As used in this section:

(1) "Constitutional right" means:

(A) An enumerated right contained in the following amendments to the United States Constitution:

(i) The First Amendment;

(ii) The Second Amendment;

- (iii) The Thirteenth Amendment;
- (iv) The Fifteenth Amendment;
- (v) The Nineteenth Amendment;
- (vi) The Twenty-Fourth Amendment; and
- (vii) The Twenty-Sixth Amendment; and

(B) An enumerated right contained in the following provisions of the Arkansas Constitution:

- (i) Article 2, § 1;
- (ii) Article 2, § 3;
- (iii) Article 2, § 4;
- (iv) Article 2, § 5;
- (v) Article 2, § 6;
- (vi) Article 2, § 13;
- (vii) Article 2, § 21;
- (viii) Article 2, § 24;
- (ix) Article 2, § 26;
- (x) Amendment 34; and
- (xi) Amendment 51; and

(2) "Felony involving violence" means the same as defined in § 5-4-501(d)(2).

(b) The state may allege in the information or indictment that a defendant committed a felony involving violence for the purpose of preventing a person from exercising his or her constitutional right.

(c) If the state makes the allegation described under subsection (b) of this section, the finder of fact shall make a finding beyond a reasonable doubt whether the person committed the felony involving violence for the purpose of preventing a person from exercising his or her constitutional right.

SECTION 4. Arkansas Code § 5-4-401 is amended to read as follows:  
5-4-401. Sentence.

(a) A Except for a defendant sentenced under subsection (c) of this section, a defendant convicted of a felony shall receive a determinate sentence according to the following limitations:

(1) For a Class Y felony, the sentence shall be not less than ten (10) years and not more than forty (40) years, or life;

(2) For a Class A felony, the sentence shall be not less than six (6) years nor more than thirty (30) years;

(3) For a Class B felony, the sentence shall be not less than five (5) years nor more than twenty (20) years;

(4) For a Class C felony, the sentence shall be not less than three (3) years nor more than ten (10) years;

(5) For a Class D felony, the sentence shall not exceed six (6) years; and

(6) For an unclassified felony, the sentence shall be in accordance with a limitation of the statute defining the felony.

(b) A defendant convicted of a misdemeanor may be sentenced according to the following limitations:

(1) For a Class A misdemeanor, the sentence shall not exceed one (1) year;

(2) For a Class B misdemeanor, the sentence shall not exceed ninety (90) days;

(3) For a Class C misdemeanor, the sentence shall not exceed thirty (30) days; and

(4) For an unclassified misdemeanor, the sentence shall be in accordance with a limitation of the statute defining the misdemeanor.

(c) A person eighteen (18) years of age or older who commits a felony involving violence in which the finder of fact finds under § 5-4-110 that the person committed the felony involving violence for the purpose of preventing a person from exercising a constitutional right is subject to the following sentencing ranges:

(1) For a Class A felony, the sentence shall be not less than ten (10) years nor more than thirty (30) years;

(2) For a Class B felony, the sentence shall be not less than six (6) years nor more than twenty (20) years;

(3) For a Class C felony, the sentence shall be not less than four (4) years nor more than ten (10) years; and

(4) For a Class D felony, the sentence shall be not less than three (3) years nor more than six (6) years.

SECTION 5. Arkansas Code Title 12, Chapter 1, is amended to add an additional section to read as follows:

12-1-103. Data collection – Civil rights criminal offense.

(a) As used in this section, “civil rights criminal offense” means an offense that resulted in a conviction and a finding under § 5-4-110 that the person committed the offense for the purpose of preventing a person from exercising his or her constitutional right.

(b)(1) The Attorney General shall establish and maintain a central repository for the collection, analysis, and dissemination of civil rights criminal offense data.

(2) The Division of Arkansas State Police and the Arkansas Crime Information Center shall assist the Attorney General with the establishment of the central repository described in subdivision (b)(1) of this section.

(c)(1) Each law enforcement agency shall submit a quarterly report to the Attorney General concerning the commission of civil rights criminal offenses within the law enforcement agency’s jurisdiction.

(2) The quarterly report required under subdivision (c)(1) of this section shall contain without limitation the following information, if known:

(A) All relevant demographic information concerning the suspect;

(B) All relevant demographic information concerning the victim, including a specific reference to the constitutional right that the law enforcement agency believes led to the commission of the civil rights criminal offense;

(C) The status or outcome of the criminal investigation or, if applicable, criminal prosecution; and

(D) A summary of the civil rights criminal offense, including all relevant information known at the time of submission of the quarterly report.

(d) Data concerning a civil rights criminal offense maintained in the central repository shall be disseminated upon request to a:

(1) Federal, state, or local law enforcement agency;

(2) Political subdivision of the state; or

(3) State agency.

(e) The Attorney General shall publish on December 1 of each year a summary and report of the data required to be collected and maintained under this section, and the annual summary and report shall be delivered to the:

- (1) Governor;
- (2) Cochair of the Legislative Council;
- (3) Speaker of the House of Representatives;
- (4) President Pro Tempore of the Senate;
- (5) United States Attorney for the Eastern District of Arkansas;
- and
- (6) United States Attorney for the Western District of Arkansas;
- and
- (7) Federal Bureau of Investigation.

*/s/Bentley*