

# Department of Finance and Administration

## Legislative Impact Statement

**Bill: HB1250**

**Bill Subtitle: AMENDING BATTERY IN THE SECOND DEGREE AND ENHANCING PENALTIES WHEN INJURY TO ANOTHER PERSON OCCURS AS A RESULT OF DRIVING WHILE INTOXICATED.**

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**Basic Change :**

Sponsors: Representatives D. Whitaker, Baine, Ballinger, Broadway, Catlett, Hillman, Neal, Vines, Wardlaw

This bill provides that causing the serious physical injury of another person while driving under the influence of alcohol constitutes an offense of battery in the second degree. Bill also mandates a minimum sentence of 30 days in prison as part of the sentence imposed when that person causes another person to sustain physical injury while driving under the influence of alcohol.

**Revenue Impact :**

None

**Taxpayer Impact :**

None

**Resources Required :**

None

**Time Required :**

None

**Procedural Changes :**

None

**Other Comments :**

None

**Legal Analysis :**

HB1250 amends the criminal offense of Battery in the Second Degree, § 5-13-202, to provide that a person may be prosecuted for battery if the person causes "serious physical injury" to another person "while operating or in actual physical control of a motor vehicle if at the time the alcohol concentration in the person's breath or blood was eight-hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204[.]"

This bill would subject to prosecution only a person that submits to a chemical test for alcohol and whose blood alcohol concentration (BAC) is eight-hundredths (.08) or more. HB1250, as currently drafted, could create an incentive for a person to refuse to submit to a chemical test in order to evade prosecution for Battery in the Second Degree when that person was involved in an alcohol-related DWI and caused physical injury to another person. In addition, a person may be intoxicated not only by drinking of alcohol, but also by ingestion of a controlled substance or other substances that can affect

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the person's ability to safely operate a motor vehicle. Under HB1250, a person that commits an injury-related DWI offense wherein the offender was intoxicated by the use of controlled substances or other substances would not be subject to prosecution for battery.

HB1250 also amends § 5-65-111, the section that provides the penalty provisions for the commission of a DWI offense. The bill repeals obsolete language concerning offenses that occurred prior to July 30, 1999 and replaces it with a new enhancement provision that requires a trial court to impose no less than thirty (30) days imprisonment for a person convicted of a DWI wherein "physical injury" resulted to another person. This amendment may cause confusion to Arkansas trial courts. Currently, § 5-65-111 provides sentencing guidelines the terms of which vary according to whether the offense is a repeat DWI offense, with enhanced imprisonment penalties if another person under the age of 16 was in the offender's vehicle at the time of the offense. However, § 5-65-111 gives the trial court discretion to order community service in lieu of imprisonment for any DWI offense. It is unclear how the amendment to require the court to order a minimum of 30 days imprisonment for causing physical injury to another person as a result of a DWI "as part of the person's sentence" will affect the current sentencing guidelines for DWI offenses when a person is also charged with battery. The 30 day sentence appears to be mandatory, but it is not clear whether the 30 days would be in addition to the other sentencing provisions provided for DWI, including the discretion of the judge to order community service in lieu of jail. An amendment to the bill is recommended to clarify this issue.

This bill does not have an effective date or emergency clause