

## A.C.A. § 3-4-403

### Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 3 Alcoholic Beverages](#)
- [Chapter 4 Alcoholic Beverages Generally — Permits](#)
- [Subchapter 4 — Violations](#)

### 3-4-403. Class A permit violations.

The following acts on the part of any permittee are Class A permit violations:

- (1) Failure to furnish access to premises by any law enforcement officer or any authorized Alcoholic Beverage Control Division personnel or failure to cooperate or take reasonable action to assist any such law enforcement officers or authorized division personnel who are on the permitted premises in the performance of their duties;
- (2) Failure to allow inspection of books or records;
- (3) Posting permit on unauthorized premises;
- (4) Manufacture or possession of controlled beverage with excess alcoholic content;
- (5) Sale by a manufacturer to other than a wholesaler. Provided, sales authorized by any law of the state relating to native wines shall not constitute a violation;
- (6) Sale by a wholesaler to other than a retailer;
- (7) Ownership or other interest in retail outlet by a manufacturer or a wholesaler. Provided, that such ownership or other interest authorized by any law of this state relating to native wines shall not be a violation;
- (8) Unauthorized gift or service to retailers by a manufacturer or a wholesaler;
- (9) Use of post-dated checks for payment of controlled beverages and merchandise;
- (10) Wholesaler making delivery to a consumer;
- (11) The permittee possessed or knew or reasonably should have known that any agent or employee or patron of the establishment possessed on the permitted premises any illegal drug or narcotic or controlled substance or that any agent or employee while acting on the permittee's behalf knowingly allowed the possession on the permitted premises of any illegal drug or narcotic or controlled substance;
- (12) Selling or allowing the consumption of alcoholic beverages on the permitted premises when the permit is suspended or on inactive status;
- (13) Selling to minors;
- (14) Unauthorized employment of a minor;
- (15)
  - (A) Disorderly conduct or a breach of the peace by a patron or employee on the permitted premises.
  - (B) As used in subdivision (15)(A) of this section, "disorderly conduct" includes without limitation a fight, brawl, or disturbance that results in bodily injury to a person on the permitted premises;
- (16) Violation of § 3-3-218;
- (17) Selling to an intoxicated person;
- (18) Unauthorized manufacturing, selling, offering, dispensing, or giving away of controlled beverages;
- (19)
  - (A) Conducting or permitting gambling on premises.
  - (B) Conducting or permitting gambling under subdivision (19)(A) of this section does not include:
    - (i) Charitable bingo and raffles under the Charitable Bingo and Raffles Enabling Act, § 23-114-101 et seq.; or
    - (ii) A lottery under the Arkansas Scholarship Lottery Act, § 23-115-101 et seq.;
- (20) Violation of legal closing hours; and
- (21)

(A) Possession of a weapon on the permitted premises by a person without a possessory or proprietary interest in the permitted premises.

(B) When the permitted premises is a retail liquor store that sells alcoholic beverages for off-premises consumption, an employee of the retail liquor store that is licensed to carry a concealed handgun by the state may possess a handgun on the permitted premises if the possession of the handgun is permitted under state law.

## History

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Acts 1981, No. 790, § 2; A.S.A. 1947, § 48-346; Acts 1991, No. 605, § 1; 1993, No. 172, § 2; 2009, No. 294, § 4; 2009, No. 605, § 9; 2009, No. 606, § 9; 2013, No. 760, § 1.

# A.C.A. § 4-21-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 4 Business and Commercial Law](#)
- [Subtitle 2. Miscellaneous Commercial Law Provisions](#)
- [Chapter 21 Jurisdiction Over Firearm Regulation](#)

### 4-21-101. Scope.

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(a)

(1) The Tenth Amendment to the United States Constitution guarantees to the states and their people all powers not granted to the United States Government elsewhere in the United States Constitution and reserves to the State of Arkansas and its people certain powers as those powers were understood at the time that Arkansas was admitted into statehood in 1836.

(2) The guaranty of those powers is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(b)

(1) The Ninth Amendment to the United States Constitution guarantees to the people rights not granted in the United States Constitution and reserves to the people of Arkansas certain rights as they were understood at the time that Arkansas was admitted into statehood in 1836.

(2) The guaranty of those rights is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(c) The regulation of intrastate commerce is vested in the states under the Ninth and Tenth Amendments to the United States Constitution.

(d) The Second Amendment to the United States Constitution reserves the right to keep and bear arms to the people as that right was understood at the time that Arkansas was admitted into statehood in 1836, and the guaranty of the right is a matter of contract between the State of Arkansas and its people and the United States as of the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

(e)

(1) Arkansas Constitution, Article 2, § 5, clearly secures to Arkansas citizens and prohibits government interference with the right of individual Arkansas citizens to keep and bear arms.

(2) This constitutional protection is unchanged from the 1836 Arkansas Constitution, which was approved by the United States Congress and the people of Arkansas, and the right exists as it was understood at the time that the compact with the United States was agreed upon and adopted by Arkansas and the United States in 1836.

### History

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Acts 2021, No. 872, § 1.

# A.C.A. § 4-21-102

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 4 Business and Commercial Law](#)
- [Subtitle 2. Miscellaneous Commercial Law Provisions](#)
- [Chapter 21 Jurisdiction Over Firearm Regulation](#)

## 4-21-102. Definitions.

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As used in this chapter:

- (1) "Borders of Arkansas" means the boundaries of Arkansas described in Arkansas Constitution, Article 1;
- (2) "Firearms accessory" means an item that is used in conjunction with or mounted upon a firearm but is not essential to the basic function of a firearm, including without limitation telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination;
- (3) "Generic and insignificant part" means a small component used in the manufacture of a firearm, including without limitation a spring, a screw, a nut, or a pin; and
- (4) "Manufactured" means that a firearm, a firearm accessory, or ammunition has been created from basic materials for functional usefulness, including without limitation forging, casting, machining, or other processes for working materials.

## History

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Acts 2021, No. 872, § 1.

# A.C.A. § 4-21-103

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 4 Business and Commercial Law](#)
- [Subtitle 2. Miscellaneous Commercial Law Provisions](#)
- [Chapter 21 Jurisdiction Over Firearm Regulation](#)

### 4-21-103. Prohibitions.

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(a) A personal firearm, a firearms accessory, or ammunition that is manufactured commercially or privately in Arkansas and that remains within the borders of Arkansas is not subject to federal law or federal regulation, including registration, under the authority of the United States Congress to regulate interstate commerce, as those items have not traveled in interstate commerce.

(b)

(1) This chapter applies to a firearm, a firearms accessory, or ammunition that is manufactured in Arkansas from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state.

(2) Generic and insignificant parts that have other manufacturing or consumer product applications that are not firearms, firearms accessories, or ammunition that are imported into Arkansas and incorporated into a firearm, a firearm accessory, or ammunition manufactured in Arkansas do not subject the firearm, firearm accessory, or ammunition to federal regulation.

(3) Basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition.

(4) The authority of the United States Congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Arkansas from the materials contained in this subsection as long as the firearm is not taken or sold outside the boundaries of the State of Arkansas.

(c) Firearms accessories that are imported into Arkansas from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Arkansas.

(d) This section does not apply to:

(1) A firearm that cannot be carried and used by one (1) person;

(2) A firearm that has a bore diameter greater than one and one-half inches (1 ½") and that uses smokeless powder, not black powder, as a propellant;

(3) Ammunition with a projectile that explodes using an explosion of chemical energy after the projectile leaves the firearm; or

(4) Other than shotguns, a firearm that discharges two (2) or more projectiles with one (1) activation of the trigger or other firing device.

### History

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Acts 2021, No. 872, § 1.

# A.C.A. § 4-21-104

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 4 Business and Commercial Law](#)
- [Subtitle 2. Miscellaneous Commercial Law Provisions](#)
- [Chapter 21 Jurisdiction Over Firearm Regulation](#)

### 4-21-104. Marketing of firearms.

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A firearm manufactured or sold in Arkansas that is subject to this chapter must have the words "Made in Arkansas" or other words that state that Arkansas is the point of origin of the firearm clearly and conspicuously stamped on a central metallic part such as the receiver or frame.

### History

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Acts 2021, No. 872, § 1.

# A.C.A. § 4-21-105

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 4 Business and Commercial Law](#)
- [Subtitle 2. Miscellaneous Commercial Law Provisions](#)
- [Chapter 21 Jurisdiction Over Firearm Regulation](#)

### 4-21-105. Unlawful enforcement of federal statutes.

(a) An employee of a state agency, a public servant of the state, or an agent or employee of the United States Government shall not knowingly enforce or attempt to enforce any act, law, statute, rule, or regulation of the United States Government created or effective on or after January 1, 2021, and relating to a personal firearm, firearm accessory, or ammunition that is owned or manufactured commercially or privately in Arkansas so long as the personal firearm, firearm accessory, or ammunition is within the borders of Arkansas.

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

## History

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Acts 2021, No. 872, § 1.

# A.C.A. § 5-73-125

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### 5-73-125. Interstate sale and purchase of shotguns, rifles, and ammunition.

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- (a) The sale of shotguns and rifles and ammunition in this state to residents of other states is authorized under regulations issued by the United States Attorney General under the Gun Control Act of 1968, 18 U.S.C. § 921 et seq., as in effect on January 1, 2009.
- (b) A resident of this state may purchase a rifle, shotgun, or ammunition in another state as expressly authorized under the regulations issued under the Gun Control Act of 1968, 18 U.S.C. § 921 et seq., as in effect on January 1, 2009.

## History

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Acts 1969, No. 159, §§ 1, 2; A.S.A. 1947, §§ 41-3174, 41-3175; Acts 2009, No. 487, § 1.



# A.C.A. § 5-73-207

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 2 — Uniform Machine Gun Act](#)

### 5-73-207. Manufacture for military, nonaggressive, or nonoffensive use.

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Nothing contained in this subchapter prohibits or interferes with:

- (1) The manufacture for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision of the United States, or the transportation required for that purpose;
- (2) The possession of a machine gun for scientific purpose, or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake; or
- (3) The possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber, for a purpose manifestly not aggressive or offensive.

## History

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Acts 1935, No. 80, § 6; Pope's Dig., § 3519; A.S.A. 1947, § 41-3162.

# A.C.A. § 5-73-208

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 2 — Uniform Machine Gun Act](#)

### 5-73-208. Registration by manufacturers.

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- (a) Every manufacturer shall keep a register of all machine guns manufactured or handled by the manufacturer.
- (b) This register shall show:
- (1) The model and serial number, date of manufacture, sale, loan, gift, delivery, or receipt, of every machine gun, the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered, or from whom it was received; and
- (2) The purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered, or from whom received.
- (c) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect the manufacturer's entire stock of machine guns, parts, and supplies therefor, and shall produce the register, required by this section, for inspection.
- (d) A violation of this section is a violation punishable by a fine of not less than one hundred dollars (\$100).

### History

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Acts 1935, No. 80, § 7; Pope's Dig., § 3520; A.S.A. 1947, § 41-3163; Acts 2009, No. 748, § 41.

# A.C.A. § 16-105-501

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 105 Abatement of Nuisances](#)
- [Subchapter 5 — Noise Pollution](#)

## 16-105-501. Definitions.

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As used in this subchapter:

- (1) "Local unit of government" means a county, city of the first class, city of the second class, or incorporated town;
- (2) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity; and
- (3) "Sport shooting range" or "range" means an area designed and operated for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting.

## History

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Acts 1997, No. 602, § 1.

# A.C.A. § 16-105-502

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 105 Abatement of Nuisances](#)
- [Subchapter 5 — Noise Pollution](#)

### 16-105-502. Sport shooting ranges.

(a) Notwithstanding any other provision of law to the contrary, a person who operates or uses a sport shooting range in this state shall not be subject to civil liability or criminal prosecution for noise or noise pollution resulting from the operation or use of the sport shooting range if the sport shooting range is in compliance with noise control ordinances of local units of government that applied to the sport shooting range and its operation at the time the sport shooting range was constructed and began operation.

(b) A person who operates or uses a sport shooting range is not subject to an action for nuisance, and no court of the state may enjoin the use or operation of a sport shooting range on the basis of noise or noise pollution, if the sport shooting range is in compliance with noise control ordinances of units of local government that applied to the sport shooting range and its operation at the time the sport shooting range was constructed and began operation.

(c) A person who subsequently acquires title to or who owns real property adversely affected by the use of property with a permanently located sport shooting range shall not maintain a nuisance action against the person who owns the sport shooting range to restrain, enjoin, or impede the use of the sport shooting range unless there has been a substantial change in the nature of the use of the sport shooting range or by a person using the sport shooting range.

(d) Rules adopted by any state agency for establishing levels of noise allowable in the outdoor atmosphere shall not apply to a sport shooting range exempted from liability under this subchapter.

(e) Notwithstanding any other provision of law to the contrary, nothing in this subchapter shall be construed to limit civil liability except in the limited case of noise pollution.

### History

Acts 1997, No. 602, § 2; 2019, No. 315, § 1320.

# A.C.A. § 16-105-503

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 105 Abatement of Nuisances](#)
- [Subchapter 5 — Noise Pollution](#)

## 16-105-503. Applicability.

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This subchapter does not affect rights or duties that matured, liabilities or penalties that were incurred, or proceedings begun before August 1, 1997.

## History

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Acts 1997, No. 602, § 3.

# A.C.A. § 16-116-301

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 116 Products Liability](#)
- [Subchapter 3 — Firearms and Ammunition](#)

### 16-116-301. Proximate cause.

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- (a) In a product liability action, the actual discharge of a firearm, a nonpowder gun, or ammunition by a person shall be the proximate cause of injury, damage, or death resulting from the use of the product, and not the inherent capability to cause injury, damage, or death of the firearm, the nonpowder gun, or ammunition.
- (b) The manufacturer's, importer's, or distributor's mere placement of a firearm, a nonpowder gun, or ammunition into the stream of commerce shall not be conduct deemed sufficient to constitute the proximate cause of injury, damage, or death resulting from a person's use of the firearm, the nonpowder gun, or ammunition.
- (c) Even if the accidental discharge of the firearm or nonpowder gun is found to be foreseeable, the manufacturer's, importer's, or distributor's mere placement of the firearm or nonpowder gun in the stream of commerce shall not be conduct deemed sufficient to constitute proximate cause in a product liability action concerning the accidental discharge of a firearm or nonpowder gun.

### History

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Acts 2003, No. 935, § 1.

# A.C.A. § 16-116-302

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 116 Products Liability](#)
- [Subchapter 3 — Firearms and Ammunition](#)

## 16-116-302. Limitations on actions — Award of fees.

(a) A person or other public or private entity may not bring an action in tort, other than a product liability action, against a firearms, nonpowder gun, or ammunition manufacturer, importer, or dealer for any remedy arising from physical or emotional injury, physical damage, or death caused by the discharge of a firearm, a nonpowder gun, or ammunition unless the action alleges that the physical or emotional injury, physical damage, or death was caused by the intentional or negligent discharge of a firearm, a nonpowder gun, or ammunition by the manufacturer, importer, or dealer.

(b) A firearm, a nonpowder gun, or ammunition manufacturer, importer, or dealer shall not be held liable as a third party for the actions of another person involving the use of a firearm, a nonpowder gun, or ammunition in any cause of action.

(c)

(1) The court, upon the filing of a proper motion, shall dismiss any action brought against a firearms, nonpowder gun, or ammunition manufacturer, importer, or dealer, which the court determines is prohibited under subsection (a) or subsection (b) of this section.

(2) Upon dismissal under this subsection, the court shall award reasonable attorney's fees, in addition to costs, to each named defendant against whom the cause of action is dismissed.

(d)

(1) Notwithstanding subsection (a) of this section, a firearms, nonpowder gun, or ammunition manufacturer, importer, or dealer may be sued in tort for any damages proximately caused by an act of the manufacturer, importer, or dealer in violation of a state law or rule or federal law or regulation.

(2) In any action brought under this subsection, the plaintiff shall have the burden of proving by a preponderance of the evidence that the defendant violated the state law or rule or federal law or regulation.

## History

Acts 2003, No. 935, § 2; 2019, No. 315, § 1321.

# A.C.A. § 16-116-303

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 116 Products Liability](#)
- [Subchapter 3 — Firearms and Ammunition](#)

### 16-116-303. Applicability.

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Nothing contained in this subchapter shall bar recovery by a plaintiff in a cause of action in which the plaintiff proves that the proximate cause of the injury, damage, or death was:

- (1) A defective firearm, a defective nonpowder gun, or defective ammunition that caused the firearm, nonpowder gun, or ammunition to be at variance with its design; or
- (2) A defectively designed firearm, a defectively designed nonpowder gun, or defectively designed ammunition that did not function in the manner reasonably expected by the ordinary consumer of the firearm, nonpowder gun, or ammunition.

### History

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Acts 2003, No. 935, § 3.



# A.C.A. § 16-120-802

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 120 Immunity from Tort Liability](#)
- [Subchapter 8 — Miscellaneous Grants of Tort Immunity](#)

### 16-120-802. Possession of concealed handgun in parking lot.

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- (a) A business entity, owner or legal possessor of property, or private employer is not liable in a civil action for damages, injuries, or death resulting from or arising out of an employee's or another person's actions involving a handgun transported or stored under § 11-5-117 or from allowing a person to enter the private employer's place of business or parking lot under § 11-5-117, including without limitation the theft of a handgun from an employee's private motor vehicle, unless the business entity, owner or legal possessor of property, or private employer intentionally solicited or procured the other person's actions.
- (b) Employees shall, within twenty-four (24) hours of obtaining knowledge of a theft occurring on a private employer's private parking lot, report a handgun as lost or stolen to the private employer and a local law enforcement agency with jurisdiction.
- (c) A handgun possessed in a parking lot does not solely constitute a failure on the part of a private employer to provide a safe workplace.
- (d)
- (1) A private employer may terminate any employee for flagrantly or unreasonably displaying a handgun in plain sight of others at the private employer's place of business or in plain sight in an employee's motor vehicle.
- (2) A private employer may bring a civil action against an employee who knowingly displays in a flagrant or unreasonable manner a handgun in plain sight of others at a private employer's place of business or in plain sight in an employee's motor vehicle, as described in § 16-118-115, except when an employee's display of a handgun is incidental and reasonably related to the transfer of the employee's handgun from his or her locked container located within the employee's motor vehicle to another part of the employee's motor vehicle or employee's person.

### History

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Acts 2017, No. 1071, § 5; 2021, No. 809, § 5.

# A.C.A. § 16-120-804

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 120 Immunity from Tort Liability](#)
- [Subchapter 8 — Miscellaneous Grants of Tort Immunity](#)

### 16-120-804. Possession of concealed handgun by emergency medical technician.

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- (a) A business entity, owner or legal possessor of property, or private employer is not liable in a civil action for damages, injuries, or death resulting from or arising out of an employee's actions involving a handgun lawfully possessed by an emergency medical technician under § 12-15-202, when the employee is the emergency medical technician, including without limitation the theft of a handgun from an employee's private motor vehicle, unless the business entity, owner or legal possessor of property, or private employer intentionally solicited or procured the other person's actions.
- (b) A concealed handgun lawfully possessed by an emergency medical technician does not solely constitute a failure on the part of a private employer to provide a safe workplace.
- (c) A private employer may terminate an emergency medical technician for flagrantly or unreasonably displaying a handgun in plain sight of others at the private employer's place of business or in plain sight in an employee's motor vehicle.

## History

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Acts 2021, No. 948, § 2.

# A.C.A. § 17-49-104

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 17 Professions, Occupations, and Businesses](#)
- [Subtitle 2. Nonmedical Professions](#)
- [Chapter 49 Transient Merchants](#)
- [Subchapter 1 — Transient Merchant Licensing Act of 1983](#)

## 17-49-104. Exemptions.

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(a) The provisions of this subchapter shall not apply to:

- (1) Sales at wholesale to retail merchants by commercial travelers or selling agents in the usual course of business;
- (2) Wholesale trade shows or conventions;
- (3) Sales of goods, wares, or merchandise by sample catalogue or brochure for future delivery;
- (4) Fairs and convention center activities conducted primarily for amusement or entertainment;
- (5) Any general sale, fair, auction, or bazaar sponsored by any church or religious organization;
- (6) Garage sales held on the premises devoted to residential use;
- (7) Sales of crafts or items made by hand and sold or offered for sale by the person making the crafts or handmade items;
- (8) Sales of agricultural products, except nursery products and foliage plants;
- (9) Sales made by a seller at residential premises pursuant to an invitation issued by the owner or legal occupant of the premises; or
- (10) School-sponsored bazaars and sales, concessions at school athletic and other events, and sales of paraphernalia used in the celebration of any nationally recognized holiday or used in connection with any public school, university, or college-related activities, flea markets, retail fireworks establishments, gun shows, sales by charitable organizations, sales of coins, and expositions sponsored by government entities or by nonprofit trade associations.

(b) A transient merchant not otherwise exempted from the provisions of this subchapter shall not be relieved or exempted from the provisions of this subchapter by reason of associating himself or herself temporarily with any local dealer, auctioneer, trader, contractor, or merchant or by conducting such temporary or transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor, or merchant.

## History

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Acts 1983, No. 587, § 4; 1983 (1st Ex. Sess.), No. 113, § 1; A.S.A. 1947, § 71-5604.

# A.C.A. § 20-27-2301

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 20 Public Health and Welfare](#)
- [Subtitle 2. Health and Safety](#)
- [Chapter 27 Miscellaneous Health and Safety Provisions](#)
- [Subchapter 23 —The Arkansas Children's Imitation Firearms Act](#)

## 20-27-2301. Definition.

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- (a) As used in this section, "imitation firearm" means a toy that is identical in appearance to an original firearm that was manufactured, designed, and produced after 1898, including only:
- (1) Air-soft guns firing nonmetallic projectiles;
  - (2) Replica nonguns; and
  - (3) Water guns.
- (b) "Imitation firearm" does not include:
- (1) A nonfiring, collector replica of an antique firearm developed before 1898;
  - (2) Traditional BB, paintball, or pellet-firing air guns that expel a projectile through the force of air pressure; or
  - (3) A device:
    - (A) For which an orange solid plug or marking is permanently affixed to the muzzle end of the barrel for a depth of not more than six millimeters (6 mm);
    - (B) For which the entire exterior surface is predominately colored other than black, brown, blue, silver, or metallic; or
    - (C) That is constructed of transparent or translucent materials that permit unmistakable observation of the complete contents of the device.

## History

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Acts 2009, No. 1495, § 2.

# A.C.A. § 20-27-2302

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 20 Public Health and Welfare](#)
- [Subtitle 2. Health and Safety](#)
- [Chapter 27 Miscellaneous Health and Safety Provisions](#)
- [Subchapter 23 —The Arkansas Children's Imitation Firearms Act](#)

### 20-27-2302. Sale of imitation firearms prohibited — Penalty.

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- (a) Except as provided under subsection (b) of this section, it is unlawful to sell or offer for sale within this state, by mail or in any other manner, an imitation firearm.
- (b) A person may sell or offer for sale an imitation firearm if the device is sold solely for purposes of:
- (1) Export in interstate or foreign commerce;
  - (2) Lawful use in a theatrical production;
  - (3) Use in a certified or regulated sporting event or competition;
  - (4) Use in a military or civil defense activity or ceremonial activity; or
  - (5) A public display authorized by a public or private school.
- (c) A person who violates subsection (a) of this section is subject in an action brought by the city attorney or prosecuting attorney to a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

### History

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Acts 2009, No. 1495, § 2.

# A.C.A. § 25-1-1001

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 25 State Government](#)
- [Chapter 1 General Provisions](#)
- [Subchapter 10 — Environmental, Social Justice, or Governance Scores or Metrics](#)

## 25-1-1001. Definitions.

As used in this subchapter:

- (1) "Ammunition" means a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile;
- (2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit;
- (3) "Direct holdings" means, with respect to a financial company, all securities of that financial company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests;
- (4)
  - (A) "Discriminate" means a company's:
    - (i) Refusal to engage in the trade of any goods or services with an entity based solely on its status as an energy, fossil fuel, firearms, or ammunition industry entity; or
    - (ii) Termination of an existing business relationship with an entity based solely on the entity's status as an energy, fossil fuel, firearms, or ammunition industry entity.
  - (B) "Discriminate" does not include actions by an investment adviser according to the investment-related guidelines, policies, or preferences of its clients;
- (5)
  - (A) "Discriminate against a firearm entity" means, without ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company engages in the production, sale, or manufacturing of firearms or ammunition.
  - (B) "Discriminate against a firearm entity" does not include:
    - (i) The established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories;
    - (ii) Actions by an investment adviser according to the investment-related guidelines, policies, or preferences of its clients; or
    - (iii) A company's refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship:
      - (a) To comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency; or
      - (b) For any traditional business reason that is specific to the customer or potential customer and not based solely on an entity's status as a firearm entity;
- (6)
  - (A) "Discriminates against energy companies" means, without ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:
    - (i) Engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or

- (ii) Does business with a company described by subdivision (6)(A)(i) of this section.
- (B) "Discriminates against energy companies" does not include actions by an investment adviser in accordance with the investment-related guidelines, policies, or preferences of its clients;
- (7) "Environmental, social justice, and other governance-related factors" means any nonpecuniary factors that a financial services provider uses to evaluate a company's policies including without limitation:
  - (A) Environmental impact; and
  - (B) Diversity and inclusion policies;
- (8)
  - (A) "Financial services provider" means an entity regulated by the State Bank Department, State Securities Department, or a similar federal regulatory agency, engaged in or transacting business in this state, including without limitation:
    - (i) A state or national bank or trust company;
    - (ii) A state or federal savings and loan association;
    - (iii) A state or federal credit union;
    - (iv) A building and loan association;
    - (v) A mortgage banker, mortgage broker, loan officer, or mortgage servicer under the Fair Mortgage Lending Act, § 23-39-501 et seq.; or
    - (vi) An entity that provides money services under the Uniform Money Services Act, § 23-55-101 et seq.
  - (B) "Financial services provider" includes any other entity that:
    - (i) Holds and receives deposits, savings, and share accounts;
    - (ii) Issues certificates of deposit; or
    - (iii) Provides to its customers any deposit accounts in which the funds are subject to withdrawal by check, instrument, order, or electronic means to make third-party payments, including the provision of financial technology services;
- (9) "Firearm" means a weapon that expels a projectile by the action of explosive or expanding gases;
- (10) "Firearm entity" means:
  - (A) A firearm, firearm accessory, or ammunition manufacturer, distributor, wholesaler, supplier, or retailer; or
  - (B) A corporation, unincorporated association, federation, business league, or business organization that:
    - (i) Is not organized or operated for profit and for which none of its net earnings inures to the benefit of any private shareholder or individual;
    - (ii) Has two (2) or more firearm entities, as described under subdivision (10)(A) of this section, as members; and
    - (iii) Is exempt from federal income tax under Section 501(a) of the Internal Revenue Code as an organization described by Section 501(c) of the Internal Revenue Code;
- (11)
  - (A) "Indirect holdings" means, with respect to a financial services provider, all securities of the financial services provider held in an account or fund, including a mutual fund, managed by one (1) or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to this subchapter.
  - (B) "Indirect holdings" does not include any money invested under a plan described by Sections 401(a), 401(k), 403(b), or 457 of the Internal Revenue Code of 1986, as it existed on January 1, 2023;
- (12) "Public entity" means a state or local government entity, including a:
  - (A) Department, division, agency, office, commission, board, or other government organization;
  - (B) Political subdivision, including a city, county, municipality, town, or conservation district; and
  - (C) Public school, school district, charter school, or public institution of higher education; and
- (13)
  - (A) "Refuse to deal" means the practice of refusing or denying any interaction with a person.
  - (B) "Refuse to deal" does not include actions by an investment adviser according to the investment-related guidelines, policies, or preferences of its clients.

## History

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# A.C.A. § 25-1-1002

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 25 State Government](#)
- [Chapter 1 General Provisions](#)
- [Subchapter 10 — Environmental, Social Justice, or Governance Scores or Metrics](#)

### 25-1-1002. List of financial services providers.

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- (a) The Treasurer of State shall maintain a list of financial services providers as determined by the ESG Oversight Committee under § 25-1-1006 on the Treasurer of State's website.
- (b) The Treasurer of State shall post the list of financial services providers that discriminate against energy companies or firearms entities or otherwise refuse to deal based on environmental, social justice, and other governance-related factors on the Treasurer of State's website.
- (c)
- (1) Forty-five (45) days before including a financial services provider on a list under § 25-1-1006, the ESG Oversight Committee shall send a written notice to the financial services provider.
- (2) The written notice under subdivision (c)(1) of this section shall include the following information:
- (A) A determination by the ESG Oversight Committee under § 25-1-1006 that the financial services provider has discriminated against energy companies or firearms entities or otherwise refused to deal based on environmental, social justice, and other governance-related factors;
- (B) Identification of the evidence of discrimination relied on by the ESG Oversight Committee, in making the determination;
- (C) Placement of the financial services provider on a list in forty-five (45) days unless, within thirty (30) days following the receipt of the written notice, the financial services provider demonstrates that it is not discriminating against energy companies or firearms entities or otherwise refusing to deal based on environmental, social justice, and other governance-related factors; and
- (D) Publication of the list will be on the Treasurer of State's website.
- (d)
- (1) If the ESG Oversight Committee provides written notice to a financial services provider under subdivision (c)(1) of this section based on information from an energy, fossil fuel, firearms, or ammunition company, then the energy, fossil fuel, firearms, or ammunition company shall be required to consent to the disclosure of any financial information held by the financial services provider of the energy, fossil fuel, firearms, or ammunition company to the ESG Oversight Committee, whether or not the information is confidential or proprietary, to allow the financial services provider to demonstrate that the financial services provider is not discriminating against energy, fossil fuel, firearm, or ammunition companies or otherwise refusing to deal with energy, fossil fuel, firearms, or ammunition companies based on environmental, social justice, and other governance-related factors.
- (2) If the energy, fossil fuel, firearms, or ammunition company refuses to consent to the disclosure of financial information under subdivision (d)(1) of this section, then the:
- (A) ESG Oversight Committee shall withdraw the written notice to the financial services provider under subdivision (c)(1) of this section; and
- (B) Financial services provider shall not be on the list under subsection (a) of this section.

### History

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# A.C.A. § 25-1-1005

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 25 State Government](#)
- [Chapter 1 General Provisions](#)
- [Subchapter 10 — Environmental, Social Justice, or Governance Scores or Metrics](#)

## 25-1-1005. Sources of information.

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- (a) In determining whether or not to include a financial services provider on a list under § 25-1-1006, the ESG Oversight Committee shall consider and may rely upon the following information:
- (1) A financial services provider's certification that it is not engaged in discrimination against a business that provides services or products to the energy, fossil fuel, firearms, or ammunition industries, and has not discriminated without a reasonable business purpose against a business based on the use of environmental, social justice, or governance-related factors;
  - (2) Statements or information made publicly available by the financial services provider's governing body, an executive director of a financial services provider, or any other officer or employee of the financial services provider with the authority to issue policy statements on behalf of the financial services provider; and
  - (3) Information published by a state or federal government entity.
- (b) In determining whether or not to include a financial services provider on a list under § 25-1-1006, the ESG Oversight Committee may consider various factors including the following but shall not make a determination based solely on the following:
- (1) Statements or complaints by an energy, fossil fuel, firearms, or ammunition company; or
  - (2) Media reports of any investment adviser or financial services provider's boycott of energy, fossil fuel, firearms, or ammunition companies.
- (c) A financial services provider shall not be compelled to produce or disclose any data or information deemed confidential, privileged, or otherwise protected from disclosure by state or federal law.

## History

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Acts 2023, No. 411, § 1; 2023, No. 760, § 1.

# A.C.A. § 25-1-1006

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 25 State Government](#)
- [Chapter 1 General Provisions](#)
- [Subchapter 10 — Environmental, Social Justice, or Governance Scores or Metrics](#)

## 25-1-1006. ESG Oversight Committee.

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(a)

(1) The ESG Oversight Committee is created to determine a list of financial services providers that discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors.

(2) The committee shall be composed of:

(A) A citizen of this state who is appointed by the Governor;

(B) A citizen of this state who is appointed by the President Pro Tempore of the Senate;

(C) A citizen of this state who is appointed by the Speaker of the House of Representatives;

(D) A citizen of this state who is appointed by the Attorney General; and

(E) The Treasurer of State or his or her designee.

(3) The committee shall serve at the pleasure of the Governor.

(b)

(1) Within ninety (90) days of the appointments to the committee under subdivision (a)(2) of this section, the committee shall prepare and provide to each public entity a list of financial services providers that discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors.

(2) The determination by the committee under subdivision (b)(1) of this section shall not be subject to the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) Upon furnishing the list of financial services providers that discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors to each public entity, the committee shall expire automatically.

(d) If the Governor determines that a financial services provider has begun or ceased to discriminate against energy, fossil fuel, firearms, or ammunition companies or otherwise refuse to deal based on environmental, social justice, and other governance-related factors, the Governor may reestablish the committee at any time by notifying in writing the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Attorney General, and the Treasurer of State.

## History

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Acts 2023, No. 411, § 1.

# A.C.A. § 25-1-1101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 25 State Government](#)
- [Chapter 1 General Provisions](#)
- [Subchapter 11 — Prohibition on Public Entities Contracting With Entities That Boycott Energy, Fossil Fuel, Firearms, and Ammunition Industries](#)

## 25-1-1101. Definitions.

As used in this subchapter:

(1) "Boycott" means without an ordinary business purpose:

(A) Engaging in refusals to deal;

(B) Terminating business activities; or

(C) Other actions that are intended to limit public entities' commercial relations with an industry in a discriminatory manner;

(2)

(A) "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.

(B) "Company" does not include a financial services provider as defined in § 25-1-1001(8)(A) as created by HB1307 of the Ninety-fourth General Assembly if that bill becomes an act;

(3)

(A) "Ordinary business purpose" means a purpose that is related to business operations.

(B) "Ordinary business purpose" does not include a purpose that is solely related to furthering social, political, or ideological interests; and

(4) "Public entity" means a state or local government entity, including a:

(A) Department, division, agency, office, commission, board, constitutional office, or other government organization;

(B) Political subdivision, including a city, county, municipality, town, or conservation district; and

(C) Public school, public school district, charter school, or public institution of higher education.

## History

Acts 2023, No. 611, § 1.

# A.C.A. § 25-1-1102

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 25 State Government](#)
- [Chapter 1 General Provisions](#)
- [Subchapter 11 — Prohibition on Public Entities Contracting With Entities That Boycott Energy, Fossil Fuel, Firearms, and Ammunition Industries](#)

25-1-1102. Prohibition on contracting with entities that boycott energy, fossil fuel, firearms, and ammunition industries.

- 
- (a) Except as provided under subsection (c) of this section, a public entity shall not:
- (1) Enter into a contract with a company to acquire or dispose of services, supplies, information technology, or construction unless the contract includes a written certification that the person or company is not currently engaged in, and agrees for the duration of the contract not to engage in, a boycott of energy, fossil fuel, firearms, and ammunition industries; or
  - (2) Engage in a boycott of energy, fossil fuel, firearms, and ammunition industries.
- (b) A company's statement that it is participating in boycotts of energy, fossil fuel, firearms, and ammunition industries or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott can be considered by the Office of State Procurement as a type of evidence, among others, that a company is participating in a boycott of energy, fossil fuel, firearms, and ammunition industries.
- (c) This section does not apply to:
- (1) A company that fails to meet the requirements under subsection (a) of this section but offers to provide the goods or services for at least twenty percent (20%) less than the lowest certifying business; or
  - (2) Contracts with a total potential value of less than seventy-five thousand dollars (\$75,000).

## History

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Acts 2023, No. 611, § 1.

# A.C.A. § 26-52-401

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 26 Taxation](#)
- [Subtitle 5. State Taxes](#)
- [Chapter 52 Gross Receipts Tax](#)
- [Subchapter 4 — Exemptions](#)

### 26-52-401. Various products and services — Definitions. [Effective October 1, 2023.]

There is specifically exempted from the tax imposed by this chapter the following:

- (1) The gross receipts or gross proceeds derived from the sale of tangible personal property, specified digital products, a digital code, or services by churches, except when the organizations may be engaged in business for profit;
- (2) The gross receipts or gross proceeds derived from the sale of tangible personal property, specified digital products, a digital code, or service by charitable organizations, except when the organizations may be engaged in business for profit;
- (3) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food in public, common, high school, or college cafeterias and lunch rooms operated primarily for teachers and pupils, not operated primarily for the public and not operated for profit;
- (4) Gross receipts or gross proceeds derived from the sale of newspapers;
- (5) Gross receipts or gross proceeds derived from sales to the United States Government;
- (6) Gross receipts or gross proceeds derived from the sale of motor vehicles and adaptive equipment to disabled veterans who have purchased the motor vehicles or adaptive equipment with the financial assistance of the United States Department of Veterans Affairs as provided under 38 U.S.C. §§ 3902 — 3903;
- (7) Gross receipts or gross proceeds derived from the sale of specified digital products, a digital code, tangible personal property, including without limitation office supplies; office equipment; program items at camp such as bows, arrows, and rope; rifles for rifle range and other rifle items; food, food ingredients, or prepared food for camp; lumber and supplies used in camp maintenance; camp equipment; first aid supplies for camp; the leasing of cars used in promoting scouting; or services to the Boy Scouts of America chartered by the United States Congress in 1916 or the Girl Scouts of the United States of America chartered by the United States Congress in 1950 or any of the scout councils in the State of Arkansas;
- (8) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Boys & Girls Clubs of America;
- (9) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Poets' Roundtable of Arkansas;
- (10) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to 4-H clubs and FFA clubs in this state, to the Arkansas 4-H Foundation, the Arkansas FFA Foundation, Inc., and the Arkansas Division of the Future Farmers of America;
- (11)
  - (A) Gross receipts or gross proceeds derived from the sale of:
    - (i) Gasoline or motor vehicle fuel on which the motor vehicle fuel or gasoline tax has been paid to the State of Arkansas;
    - (ii) Special fuel or petroleum products sold for consumption by vessels, barges, and other commercial watercraft and railroads;
    - (iii) Dyed distillate special fuel on which the tax levied by § 26-56-224 has been paid; and
    - (iv)

(a) Biodiesel fuel.

(b) As used in this subdivision (11)(A)(iv), "biodiesel fuel" means a diesel fuel substitute produced from nonpetroleum renewable resources.

(B) Nothing in this subdivision (11) shall exempt gasoline from the wholesale gross receipts tax imposed pursuant to Acts 1995, No. 1005;

(12)

(A) Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased, whether within or without the state if the sales within the state are made to persons to whom gross receipts tax permits have been issued as provided in § 26-52-202.

(B)

(i) Goods, wares, merchandise, and property sold for use in manufacturing, printing, compounding, processing, assembling, or preparing for sale can be classified as having been sold for the purposes of resale or the subject matter of resale only in the event the goods, wares, merchandise, or property becomes a recognizable integral part of the manufactured, printed, compounded, processed, assembled, or prepared products.

(ii) The sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purpose of this act as being "for consumption or use";

(13) Gross proceeds derived from sales of advertising space:

(A) In newspapers and publications;

(B) Through billboard advertising services; or

(C) On a public transit bus;

(14) Gross receipts or gross proceeds derived from sales of publications sold through regular subscription, regardless of the type or content of the publication or the place printed or published;

(15) Gross receipts or gross proceeds derived from gate admission fees at state, district, county, or township fairs or at any rodeo if the gross receipts or gross proceeds derived from gate admission fees to the rodeo are used exclusively for the improvement, maintenance, and operation of the rodeo and if no part of the net earnings of the state, district, county, or township fair or rodeo inures to the benefit of any private stockholder or individual;

(16) Gross receipts or gross proceeds derived from sales for resale which the state is prohibited by the United States Constitution and laws of the United States from taxing or further taxing, or which the state is prohibited by the Arkansas Constitution from taxing or further taxing;

(17) Gross receipts or gross proceeds derived from isolated sales not made by an established business;

(18)

(A) Gross receipts or gross proceeds derived from the sale of:

(i) Any cotton or seed cotton or lint cotton or baled cotton, whether compressed or not, or cotton seed in its original condition;

(ii) Seed for use in the commercial production of an agricultural product or of seed;

(iii) Raw products from the farm, orchard, or garden, when the sale is made by the producer of the raw products directly to the consumer and user, including the sale of raw products from a farm, orchard, or garden that are produced and sold by the producer of the raw products at a farmers' market, including without limitation cut or dried flowers, plants, vegetables, fruits, nuts, and herbs;

(iv) Livestock, poultry, poultry products, and dairy products of producers owning not more than five (5) cows; and

(v) Baby chickens.

(B)

(i) An exemption granted by this subdivision (18) shall not apply when the articles are sold at or from an established business, even though sold by the producer of the articles.

(ii) A farmers' market is not an established business if the farmers' market sells raw product directly to the user of the raw product and the farmers' market is:

(a) Comprised of one (1) or more producers of a raw product;

(b) Operated seasonally; and

(c) Held out-of-doors or in a public space.

(C)

(i) However, nothing in subdivision (18)(B) of this section shall be construed to mean that the gross receipts or gross proceeds received by the producer from the sale of the products mentioned in this subdivision (18) shall be taxable when the producer sells commodities produced on his or her farm at an established business located on his or her farm.

(ii) The provisions of this subdivision (18) are intended to exempt the sale by livestock producers of livestock sold at special livestock sales.

(iii) The provisions of this subdivision (18) shall not be construed to exempt sales of dairy products by any other businesses.

(iv) The provisions of this subdivision (18) shall not be construed to exempt sales by florists and nurserymen. As used in this subdivision (18), "nurserymen" does not include Christmas tree farmers;

(19) Gross receipts or gross proceeds derived from the sale of food, food ingredients, or prepared food to governmental agencies for free distribution to any public, penal, and eleemosynary institutions or for free distribution to the poor and needy;

(20)

(A) Gross receipts or gross proceeds derived from the rental or sale of medical equipment, for the benefit of persons enrolled in and eligible for Medicare or Medicaid programs as contained in Titles XVIII and XIX of the Social Security Act, or successor programs or any other present or future United States Government subsidized healthcare program, by medical equipment suppliers doing business in the State of Arkansas.

(B) However, this exemption applies only to receipts or proceeds received directly or indirectly through an organization administering the program in the State of Arkansas pursuant to a contract with the United States Government in accordance with the terms thereof;

(21)

(A) Gross receipts or gross proceeds derived from the sale of tangible personal property, specified digital products, a digital code, or services as specifically provided in this subdivision (21) to a hospital or sanitarium operated for charitable and nonprofit purposes or a nonprofit organization whose sole purpose is to provide temporary housing to the family members of patients in a hospital or sanitarium.

(B) However, gross proceeds and gross receipts derived from the sale of materials used in the original construction or repair or further extension of the hospital or sanitarium or temporary housing facilities, except state-owned tax-supported hospitals and sanitariums, shall not be exempt from this chapter;

(22) Gross receipts or gross proceeds derived from the sale of used tangible personal property when the used property was:

(A) Traded in and accepted by the seller as part of the sale of other tangible personal property; and

(B)

(i) The state gross receipts tax was collected and paid on the total amount of consideration for the sale of the other tangible personal property without any deduction or credit for the value of the used tangible personal property.

(ii) The condition that the state gross receipts tax was collected and paid on the total amount of consideration is not required for entitlement to this exemption when the sale of the other tangible personal property was otherwise exempt under other provisions of this chapter.

(iii) This subdivision (22) does not apply to transactions involving used automobiles under § 26-52-510(b) or used aircraft under § 26-52-505;

(23) Gross receipts or gross proceeds derived from the sale of unprocessed crude oil;

(24) The gross receipts or gross proceeds derived from the sale of electricity used in the manufacture of aluminum metal by the electrolytic reduction process;

(25) The gross receipts or gross proceeds derived from the sale of articles sold on the premises of the veterans' homes;

(26) That portion of the gross receipts or gross proceeds derived from the sale of automobile parts which constitute core charges which are received for the purpose of securing a trade-in for the article purchased, except that when the article is not traded in, then the tax is due on the core charge;

(27)

(A) Gross receipts and gross proceeds derived from the sale of:

(i) Tangible personal property lawfully purchased with food stamps or food coupons issued in accordance with the Food Stamp Act of 1964, 7 U.S.C. § 2011 et seq.;

(ii) Tangible personal property lawfully purchased with food instruments or vouchers issued under the Special Supplemental Nutrition Program for Women, Infants and Children in accordance with Section 17 of the Child Nutrition Act of 1966, 42 U.S.C § 1786, as amended; and

(iii) Food or food ingredients purchased through bids under the Special Supplemental Nutrition Program for Women, Infants and Children.

(B) If consideration other than food stamps, food coupons, food instruments, or vouchers is used in any sale, that portion of the sale shall be fully taxable.

(C) The tax exemption provided by this subdivision (27) shall expire if the exemption becomes no longer required for full participation in the food stamp program and the Special Supplemental Nutrition Program for Women, Infants and Children;

(28)

(A) Parts or other tangible personal property incorporated into or that become a part of commercial jet aircraft components, or commercial jet aircraft subcomponents, and the services required to incorporate the parts or other tangible personal property or otherwise make the parts or other tangible personal property part of a commercial jet aircraft component or commercial jet aircraft subcomponent.

(B) As used in this subdivision (28), "commercial jet aircraft" means a commercial, military, private, or other turbine or turbo jet aircraft having a certified maximum take-off weight of twelve thousand five hundred pounds (12,500 lbs.) or more;

(29) Gross receipts or gross proceeds derived from the sale of tangible personal property, specified digital products, or a digital code specifically exempted from taxation by the Arkansas Compensating Tax Act of 1949, § 26-53-101 et seq.;

(30)

(A) The gross receipts proceeds charged to a consumer or user for the transfer of fill material by a business engaged in transporting or delivering fill material, provided:

(i) The fill material was obtained free of charge by a business engaged in transporting or delivering fill material; and

(ii) The charge to the consumer or user is only for delivery.

(B) Any business claiming the exemption under subdivision (30)(A) of this section shall keep suitable records necessary to determine that fill material was obtained without charge;

(31) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to Habitat for Humanity;

(32) Gross receipts or gross proceeds derived from the long-term lease, thirty (30) days or more, of commercial trucks used for interstate transportation of goods if the trucks are registered under an international registration plan similar to § 27-14-501 et seq. and administered by another state which offers reciprocal privileges for vehicles registered under § 27-14-501 et seq.;

(33) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to The Salvation Army;

(34) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, and services to Heifer International, Inc.;

(35)

(A) Gross receipts or gross proceeds derived from the sale of catalysts, chemicals, reagents, and solutions which are consumed or used:

(i) In producing, manufacturing, fabricating, processing, or finishing articles of commerce at manufacturing or processing plants or facilities in the State of Arkansas; and

(ii) By manufacturing or processing plants or facilities in the state to prevent or reduce air or water pollution or contamination which might otherwise result from the operation of the plant or facility.

(B) As used in this subdivision (35), "manufacturing" and "processing" mean the same as set forth in § 26-52-402(b);

(36) Gross receipts or gross proceeds derived from the sale of:

(A) Fuel packaging materials to a person engaged in the business of processing hazardous and nonhazardous waste materials into fuel products at a facility permitted by the Division of Environmental Quality for hazardous waste treatment; and

(B) Machinery and equipment, including analytical equipment and chemicals used directly in processing and packaging of hazardous and nonhazardous waste materials into fuel products at a facility permitted by the Division of Environmental Quality for hazardous waste treatment;

(37) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Arkansas Symphony Orchestra Society, Inc.;

(38) Gross receipts or gross proceeds derived from the sale of any good, ware, merchandise, or tangible personal property withdrawn or used from an established business or from the stock in trade of the established reserves for consumption or use in an established business or by any other person if the good, ware, merchandise, or tangible personal property withdrawn or used is donated to a National Guard member, emergency service worker, or volunteer providing services to a county which has been declared a disaster area by the Governor;

(39) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services to the Arkansas Black Hall of Fame Foundation;



- (40) Gross receipts or gross proceeds derived from sales of tangible personal property at a concession stand operated by a nonprofit youth organization if:
- (A) The individuals operating the concession stand are members of the nonprofit youth organization or volunteers working on behalf of the nonprofit youth organization; and
  - (B) All of the proceeds from the sales of tangible personal property at the concession stand go to the nonprofit youth organization;
- (41)
- (A) Gross receipts or gross proceeds derived from the sale of:
    - (i) Tangible personal property, specified digital products, or a digital code by or to a car wash operator for use in an automatic car wash, a car wash tunnel, or a self-service bay or as part of an ancillary service;
    - (ii) Services to a car wash operator;
    - (iii) Ancillary services by a car wash operator; and
    - (iv) A car wash by a car wash operator through an automatic car wash, car wash tunnel, or self-service bay.
  - (B) As used in this subdivision (41):
    - (i)
      - (a) "Ancillary service" means a service provided by a car wash operator in conjunction with the sale of a service through an automatic car wash, a car wash tunnel, or a self-service bay that involves the cleaning of the interior or exterior, or both, of a motor vehicle.
      - (b) "Ancillary service" includes without limitation:
        - (1) Hand prepping any portion of a motor vehicle;
        - (2) Vacuuming;
        - (3) Hand drying any portion of a motor vehicle;
        - (4) Waxing any portion of a motor vehicle;
        - (5) Hand cleaning any portion of a motor vehicle; and
        - (6) Applying a protective or shine coat to any portion of a motor vehicle;
      - (ii) "Automatic car wash" means the same as defined in § 26-57-1601;
      - (iii) "Car wash operator" means a person that operates one (1) or more automatic car washes, car wash tunnels, or self-service bays or any combination of automatic car washes, car wash tunnels, or self-service bays;
      - (iv) "Car wash tunnel" means the same as defined in § 26-57-1601; and
      - (v) "Self-service bay" means a car wash bay that allows a person to manually wash a motor vehicle using equipment and supplies provided by the car wash operator;

(42)

    - (A) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or services by a parent teacher organization, a parent teacher association, or a similar organization that is:
      - (i) An organization described in 26 U.S.C. § 501(c)(3), as in effect on January 1, 2021; and
      - (ii) Affiliated with a public school.
    - (B) As used in this subdivision (42), "public school" means any school operated by a public school district or any open-enrollment public charter school, as defined in § 6-23-103;

(43) Gross receipts or gross proceeds derived from sales of tangible personal property, specified digital products, a digital code, or a service to the Disabled American Veterans organization; and

(44) Gross receipts or gross proceeds derived from the sale of a service providing for the electronic transmission of a drug prescription directly to a pharmacy, including without limitation services provided directly by an electronic prescription technology company or indirectly through a pharmacy software company or pharmacy management system.

## History

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Acts 1941, No. 386, § 4; 1947, No. 102, § 1; 1949, No. 15, § 1; 1949, No. 152, § 1; 1961, No. 213, § 1; 1965, No. 133, § 1; 1967, No. 113, § 1; 1968 (1st Ex. Sess.), No. 5, § 1; 1973, No. 403, § 1; 1975, No. 922, § 1; 1975, No. 927, § 1; 1975 (Extended Sess., 1976), No. 1013, § 1; 1977, No. 252, § 1; 1977, No. 382, § 1; 1979, No. 324, § 16; 1979, No. 630, § 1; 1981, No. 706, § 1; 1985, No. 518, § 1; A.S.A. 1947, § 84-1904; Acts 1987, No. 7, § 1; 1987, No. 986, §§ 1-3; 1987, No. 1033, §§

11, 12; 1989, No. 753, § 1; 1991, No. 458, § 2; 1992 (1st Ex. Sess.), No. 58, § 3; 1992 (1st Ex. Sess.), No. 61, § 3; 1993, No. 617, §§ 1, 2; 1993, No. 820, § 1; 1993, No. 987, § 1; 1993, No. 1183, § 1; 1995, No. 504, § 1; 1995, No. 516, § 1; 1995, No. 850, § 2; 1995, No. 1005, § 2; 1997, No. 603, § 1; 1997, No. 1222, § 1; 1999, No. 854, § 1; 2001, No. 1683, § 1; 2005, No. 2132, § 1; 2007, No. 87, § 1; 2007, No. 181, §§ 15-19; 2007, No. 860, § 3; 2009, No. 655, § 16; 2009, No. 1205, § 1; 2011, No. 983, § 8; 2011, No. 998, § 2; 2015, No. 1182, § 1; 2017, No. 141, §§ 22-29; 2019, No. 634, § 1; 2019, No. 819, § 18; 2019, No. 822, § 22; 2019, No. 910, § 3262; 2021, No. 144, § 2; 2021, No. 873, § 1; 2021, No. 880, § 1; 2023, No. 446, § 1; 2023, No. 518, § 1; 2023, No. 827, § 1.

# A.C.A. § 26-52-518

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 26 Taxation](#)
- [Subtitle 5. State Taxes](#)
- [Chapter 52 Gross Receipts Tax](#)
- [Subchapter 5 — Returns and Remittance of Tax](#)

### 26-52-518. Special events — Definitions.

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(a) As used in this section:

(1) "Person" means a person as defined in § 26-52-103;

(2) "Promoter" or "organizer" means a person who organizes or promotes a special event which results in the rental, occupation, or use of any structure, lot, tract of land, motor vehicle, sample or display case, table, or any other similar items for the exhibition and sale of tangible personal property by special events vendors;

(3)

(A) "Special event" means an entertainment, amusement, recreation, or marketing event which occurs at a single location on an irregular basis and where tangible personal property is sold.

(B) The special events shall include, but are not limited to:

(i) Auto shows;

(ii) Boat shows;

(iii) Gun shows;

(iv) Knife shows;

(v) Home shows;

(vi) Craft shows;

(vii) Flea markets;

(viii) Carnivals;

(ix) Circuses;

(x) Bazaars;

(xi) Fairs; and

(xii) Art or other merchandise displays or exhibits.

(C) The special events shall not include:

(i) A county, district, or state fair;

(ii) The four states livestock show that has been approved under the rules of the Arkansas Livestock and Poultry Commission to receive state funds; or

(iii)

(a) A public school fundraising event sponsored by a parent teacher organization, a parent teacher association, or a similar organization if the:

(1) Ticket sales to the fundraising event are sold by public school personnel, students, parents of students, and community volunteers and businesses; and

(2) Gross proceeds from the ticket sales are used to directly assist the public school in fulfilling its mission of educating children.

(b) As used in this subdivision (a)(3)(C)(iii), "public school" means any school operated by a public school district or any open-enrollment public charter school, as defined in § 6-23-103; and

(4) "Special event vendor" means a person making sales of tangible personal property at a special event within the State of Arkansas and who is not permitted under § 26-52-201 et seq.

(b) Special event vendors shall collect sales tax from purchasers of tangible personal property, specified digital products, or a digital code and remit the tax daily, along with a daily sales tax report, to the promoter or organizer.

- (c) Promoters or organizers of special events shall register for sales tax collection with the Secretary of the Department of Finance and Administration and shall provide to special event vendors special event sales tax reporting forms and any other information which may be required by the secretary.
- (d) Special event vendors shall file daily special event sales tax reports with organizers or promoters during the special event and remit daily sales tax due along with the daily report.
- (e) Within thirty (30) days following the conclusion of the special event, the organizer or promoter shall forward all daily reports and payments to the Department of Finance and Administration along with a completed sales tax report combining all taxable sales and sales tax due.
- (f)
  - (1) Promoters and organizers shall not be liable for unreported taxes of special event vendors.
  - (2) Promoters and organizers shall be liable for their failure to remit to the secretary sales taxes which are remitted to them by special event vendors.
  - (3) Promoters and organizers shall be subject to applicable penalty and interest impositions.

## History

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Acts 1995, No. 370, § 1; 1997, No. 137, § 1; 1997, No. 1256, § 1; 2017, No. 141, § 38; 2019, No. 315, § 2997; 2019, No. 910, §§ 3885, 3886; 2021, No. 873, § 2; 2021, No. 972, § 1.

# A.C.A. § 13-6-302

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 13 Libraries, Archives, and Cultural Resources](#)
- [Chapter 6 Archeological Research](#)
- [Subchapter 3 — Sites](#)

## 13-6-302. Definitions.

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As used in this subchapter:

(1)

(A)

(i) "Archeological site" means a location containing the physical remains of human life or human activities that are no less than one hundred (100) years old.

(ii) An archeological site may but need not contain pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, graves, and human skeletal remains.

(B) "Archeological site" includes all aboriginal mounds, forts, earthworks, village locations, burial grounds, historic or prehistoric ruins, mines, or caves that are or may be the source of a significant amount of artifacts;

(2) "Artifact" means a relic, specimen, or object of an historical, prehistorical, archeological, or anthropological nature that:

(A) May be found above or below the surface of the earth; and

(B) Has scientific or historic value as an object of antiquity, as an aboriginal relic, or as an archeological specimen; and

(3) "Field archeology" means the study of the traces of human culture at any land or water site by means of surveying, digging, sampling, excavating, or removing subsurface objects or going on an archeological site with that intent.

## History

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Acts 1967, No. 58, § 1; A.S.A. 1947, § 8-801; Acts 2007, No. 217, § 1.

# A.C.A. § 14-16-501

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 14 Local Government](#)
- [Subtitle 2. County Government](#)
- [Chapter 16 Powers of Counties Generally](#)
- [Subchapter 5 — Regulation of Use of Firearms and Archery Equipment](#)

### 14-16-501. Regulation upon request of suburban improvement district.

---

(a) Upon the written request of the governing body of a suburban improvement district, a county may by ordinance regulate the discharge of firearms and the shooting of archery equipment within all or any part of the suburban improvement district.

(b) As used in this section, “suburban improvement district” means a suburban improvement district which includes as one of its purposes for organization the construction or maintenance of roads or streets and which is governed by § 14-92-201 et seq. or its predecessor acts.

### History

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Acts 1991, No. 385, § 1; 1991, No. 681, § 1.

# A.C.A. § 14-16-502

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 14 Local Government](#)
- [Subtitle 2. County Government](#)
- [Chapter 16 Powers of Counties Generally](#)
- [Subchapter 5 — Regulation of Use of Firearms and Archery Equipment](#)

### 14-16-502. Regulation upon request of property owners' association.

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Upon the written request of a property owners' association which has a population at least equal to that prescribed for cities of the first class and which is located outside the boundaries of a municipality, a county may by ordinance regulate the discharge of firearms and the shooting of archery equipment within all or any part of the area included in the property owners' association.

## History

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Acts 1991, No. 385, § 2.

# A.C.A. § 14-16-504

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 14 Local Government](#)
- [Subtitle 2. County Government](#)
- [Chapter 16 Powers of Counties Generally](#)
- [Subchapter 5 — Regulation of Use of Firearms and Archery Equipment](#)

### 14-16-504. Regulation by local unit of government.

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(a) As used in this section, "local unit of government" means a city, town, or county.

(b)

(1)

(A) A local unit of government shall not enact any ordinance or regulation pertaining to, or regulate in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law.

(B) The provision in subdivision (b)(1)(A) of this section does not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm.

(2)

(A) A local unit of government shall not have the authority to bring suit and shall not have the right to recover against any firearm or ammunition manufacturer, trade association, or dealer for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public.

(B) The authority to bring any suit and the right to recover against any firearm or ammunition manufacturer, trade association, or dealer for damages, abatement, or injunctive relief shall be reserved exclusively to the State of Arkansas.

(C) However, subdivisions (b)(1)(A) and (B) of this section do not prevent a local unit of government from bringing suit against a firearm or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the local unit of government.

(c)

(1) The governing body of a local unit of government, following the proclamation by the Governor of a state of emergency, is prohibited from enacting an emergency ordinance regulating the transfer, transportation, or carrying of firearms or components of firearms.

(2) A person who has his or her firearm seized in violation of subdivision (c)(1) of this section may bring an action in the circuit court having jurisdiction for the return of the seized firearm.

## History

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Acts 1993, No. 1100, §§ 1-3; 1999, No. 951, § 1; 2011, No. 165, § 1.



# A.C.A. § 14-54-1411

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 14 Local Government](#)
- [Subtitle 3. Municipal Government](#)
- [Chapter 54 Powers of Municipalities Generally](#)
- [Subchapter 14 — Miscellaneous Regulations](#)

### 14-54-1411. Firearms and ammunition — Definition.

---

(a) As used in this section, "local unit of government" means a city, town, or county.

(b)

(1)

(A) A local unit of government shall not enact any ordinance or regulation pertaining to, or regulate in any other manner, the ownership, transfer, transportation, carrying, or possession of firearms, ammunition for firearms, or components of firearms, except as otherwise provided in state or federal law.

(B) This shall not prevent the enactment of an ordinance regulating or forbidding the unsafe discharge of a firearm.

(2)

(A) A local unit of government shall have no authority to bring suit and shall have no right to recover against any firearm or ammunition manufacturer, trade association, or dealer for damages, abatement, or injunctive relief resulting from or relating to the lawful design, manufacture, marketing, or sale of firearms or ammunition to the public.

(B) The authority to bring any suit and the right to recover against any firearm or ammunition manufacturer, trade association, or dealer for damages, abatement, or injunctive relief shall be reserved exclusively to the State of Arkansas.

(C) Provided, this shall not prevent a local unit of government from bringing suit against a firearm or ammunition manufacturer or dealer for breach of contract or warranty as to firearms or ammunition purchased by the local unit of government.

(c)

(1) Notwithstanding subsection (b) of this section, the governing body of a local unit of government, following the proclamation by the Governor of a state of emergency, may enact an emergency ordinance regulating the transfer, transportation, or carrying of firearms or components of firearms.

(2) Such emergency ordinance shall not be effective for a period of more than twenty (20) days and shall be enacted by a two-thirds ( $\frac{2}{3}$ ) majority of the governing body.

## History

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Acts 1993, No. 1100, §§ 1-3; 1999, No. 951, § 2.

# A.C.A. § 5-1-102

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 1 General Provisions](#)

### 5-1-102. Definitions.

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As used in the Arkansas Criminal Code:

- (1) "Act" or "action" means the same as defined in § 5-2-201;
- (2) "Actor" includes, when appropriate, a person who possesses something or who omits to act;
- (3) "Conduct" means the same as defined in § 5-2-201;
- (4) "Deadly weapon" means:
  - (A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or
  - (B) Anything that in the manner of its use or intended use is capable of causing death or serious physical injury;
- (5) "Element of the offense" means the conduct, the attendant circumstances, or the result of conduct that:
  - (A) Is specified in the definition of the offense;
  - (B) Establishes the kind of culpable mental state required for commission of the offense; or
  - (C) Negates an excuse or justification for the conduct;
- (6)
  - (A) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use.
  - (B) "Firearm" includes:
    - (i) A device described in subdivision (6)(A) of this section that is not loaded or lacks a clip or another component to render it immediately operable; and
    - (ii) Components that can readily be assembled into a device described in subdivision (6)(A) of this section;
- (7) "Included offense" means the same as defined in § 5-1-110(b);
- (8)
  - (A) "Knowingly" or an equivalent term such as "knowing", "with knowledge", "willful", or "willfully" means the same as knowingly as defined in § 5-2-202.
  - (B) However, if the statute clearly indicates a legislative intent to require a culpable mental state of "purposely", "willful" or "willfully" means the same as "purposely" defined in § 5-2-202;
- (9) "Law" includes a statute or court decision;
- (10) "Law enforcement officer" means any public servant vested by law with a duty to maintain public order or to make an arrest for an offense;
- (11) "Negligently" or an equivalent term such as "negligence" or "with negligence" means the same as defined in § 5-2-202;
- (12) "Omission" or "omit to act" means the same as defined in § 5-2-201;
- (13)
  - (A) "Person", "actor", "defendant", "he", "she", "her", or "him" includes:
    - (i) Any natural person; and
    - (ii) When appropriate, an organization as defined in § 5-2-501.
  - (B)
    - (i)
      - (a) As used in §§ 5-10-101 — 5-10-105 and 5-4-604, "person" also includes an unborn child in utero at any stage of development.

- (b) "Unborn child" means offspring of human beings from conception until birth.
- (ii) This subdivision (13)(B) does not apply to:
- (a) An act that causes the death of an unborn child in utero if the act was committed during a legal abortion to which the woman consented, including an abortion performed to remove an ectopic pregnancy or other nonviable pregnancy when the embryo is not going to develop further;
  - (b) An act that is committed pursuant to a usual and customary standard of medical practice during diagnostic testing or therapeutic treatment;
  - (c) An act that is committed in the course of medical research, experimental medicine, or an act deemed necessary to save the life or preserve the health of the woman;
  - (d) Assisted reproduction technology activity, procedure, or treatment; or
  - (e) An act occurring before transfer to the uterus of the woman of an embryo created through in vitro fertilization.
- (iii) Nothing in this subdivision (13)(B) shall be construed to allow the charging or conviction of a woman with any criminal offense in the death of her own unborn child in utero;
- (14) "Physical injury" means the:
- (A) Impairment of physical condition;
  - (B) Infliction of substantial pain; or
  - (C) Infliction of bruising, swelling, or a visible mark associated with physical trauma;
- (15) "Possess" means to exercise actual dominion, control, or management over a tangible object;
- (16) "Public servant" means any:
- (A) Officer or employee of this state or of any political subdivision of this state;
  - (B) Person exercising a function of any officer or employee of this state or any political subdivision of this state;
  - (C)
    - (i) Person acting as an adviser, consultant, or otherwise in performing any governmental function.
    - (ii) However, this subdivision (16)(C) does not include a witness; or
    - (D) Person elected, appointed, or otherwise designated to become a public servant although not yet occupying that position;
- (17) "Purposely" or an equivalent term such as "purpose", "with purpose", "intentional", "intentionally", "intended", or "with intent to" means the same as purposely as defined in § 5-2-202;
- (18) "Reasonably believes" or "reasonable belief" means a belief:
- (A) That an ordinary and prudent person would form under the circumstances in question; and
  - (B) Not recklessly or negligently formed;
- (19) "Sawed-off or short-barreled rifle" means:
- (A) A rifle having one (1) or more barrels less than sixteen inches (16") in length; or
  - (B) Any weapon made from a rifle, whether by alteration, modification, or otherwise, if the weapon, as modified, has an overall length of less than twenty-six inches (26");
- (20) "Sawed-off or short-barreled shotgun" means:
- (A) A shotgun having one (1) or more barrels less than eighteen inches (18") in length; or
  - (B) Any weapon made from a shotgun, whether by alteration, modification, or otherwise, if the weapon, as modified, has an overall length of less than twenty-six inches (26");
- (21) "Serious physical injury" means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health, or loss or protracted impairment of the function of any bodily member or organ; and
- (22) "Statute" includes the Arkansas Constitution and any statute of this state, any ordinance of a political subdivision of this state, and any rule or regulation lawfully adopted by an agency of this state.

## History

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Acts 1975, No. 280, § 115; A.S.A. 1947, § 41-115; Acts 1994 (2nd Ex. Sess.), No. 45, § 2; 1999, No. 1273, §§ 1-3; 1999, No. 1476, § 1; 2005, No. 1994, § 442; 2007, No. 827, § 11; 2013, No. 1032, § 1; 2021, No. 931, § 1.

# A.C.A. § 5-2-607

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 2 Principles of Criminal Liability](#)
- [Subchapter 6 — Justification](#)

### 5-2-607. Use of deadly physical force in defense of a person.

---

(a) A person is justified in using deadly physical force upon another person if the person reasonably believes that the other person is:

- (1) Committing or about to commit a felony involving physical force or violence;
- (2) Using or about to use unlawful deadly physical force; or
- (3) Imminently endangering the person's life or imminently about to victimize the person from the continuation of a pattern of domestic abuse.

(b) A person is not required to retreat before using deadly physical force if the person:

- (1) Is lawfully present at the location where deadly physical force is used;
- (2) Has a reasonable belief that the person against whom the deadly physical force is used is imminently threatening to cause death or serious physical injury to the person or another person;
- (3) Except as provided under § 5-2-606(b)(2)(B), is not the initial aggressor and has not provoked the person against whom the deadly physical force is used;
- (4) Is not committing a felony offense of possession of a firearm by certain persons, § 5-73-103, with the firearm used to employ the deadly physical force, unless the person is in or at the person's dwelling or in the curtilage surrounding the person's dwelling;
- (5) Is not engaged in criminal activity that gives rise to the need for the use of deadly physical force at the time the deadly physical force is used; and
- (6) Is not engaged in any activity in furtherance of a criminal gang, organization, or enterprise as defined in § 5-74-103.

(c) As used in this section:

- (1) "Curtilage" means the land adjoining a dwelling that is convenient for residential purposes and habitually used for residential purposes, but not necessarily enclosed, and includes an outbuilding that is directly and intimately connected with the dwelling and in close proximity to the dwelling; and
- (2) "Domestic abuse" means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; or

(B) Any sexual conduct between family or household members, whether minors or adults, that constitutes a crime under the laws of this state.

### History

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Acts 1975, No. 280, § 507; A.S.A. 1947, § 41-507; Acts 1997, No. 1257, § 1; 2007, No. 111, § 1; 2009, No. 748, § 2; 2015, No. 828, § 1; 2021, No. 250, § 2.

# A.C.A. § 5-4-303

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 4 Disposition of Offenders](#)
- [Subchapter 3 — Suspension or Probation](#)

### 5-4-303. Conditions of suspension or probation.

---

- (a) If a court suspends imposition of sentence on a defendant or places him or her on probation, the court shall attach such conditions as are reasonably necessary to assist the defendant in leading a law-abiding life.
- (b) The court shall provide as an express condition of every suspension or probation that the defendant not commit an offense punishable by imprisonment during the period of suspension or probation.
- (c) If the court suspends imposition of sentence on a defendant or places him or her on probation, as a condition of its order the court may require that the defendant:
- (1) Support his or her dependents and meet his or her family responsibilities;
  - (2) Undergo available medical or psychiatric treatment and enter and remain in a specified institution when required for medical or psychiatric treatment;
  - (3) Participate in a community-based rehabilitative program or work-release program that uses practices proven to reduce recidivism and for which the court may impose a reasonable fee or assessment on the defendant to be used in support of the community-based rehabilitative program or work-release program;
  - (4) Refrain from frequenting an unlawful or designated place or consorting with a designated person;
  - (5) Have no firearm in his or her possession;
  - (6) Make restitution to an aggrieved party in an amount the defendant can afford to pay for the actual loss or damage caused by his or her offense;
  - (7) Post a bond, with or without surety, conditioned on the performance of a prescribed condition; and
  - (8) Satisfy any other condition reasonably related to the rehabilitation of the defendant and not unduly restrictive of his or her liberty or incompatible with his or her freedom of conscience.
- (d) If the court places a defendant on probation, as a condition of its order the court may require that the defendant:
- (1) Report as directed to the court or the probation officer and permit the probation officer to visit the defendant at the defendant's place of employment or elsewhere;
  - (2) Remain within the jurisdiction of the court unless granted permission to leave in a written statement by the court or the probation officer; and
  - (3) Answer any reasonable inquiry by the court or the probation officer and promptly notify the court or probation officer of any change in address or employment.
- (e) If the court suspends imposition of sentence on a defendant or places him or her on probation, the court shall:
- (1) Require that the defendant either:
    - (A) Work consistently in suitable employment for the entire duration of his or her suspended sentence or probation or for three (3) years, whichever occurs earlier; or
    - (B)
  - (i) If the defendant is unemployed, pursue a prescribed secular course of study and show continuous progress in improving academic skills and education by increasing his or her reading, math, and communication skills to at least the ninth grade level regardless of a prior high school or other educational credentials.

(ii) Under subdivision (e)(1)(B)(i) of this section, a defendant shall also meet at least one (1) of the following benchmarks:

(a) Earn a Career Readiness Certificate;

(b) Earn a Workforce Alliance for Growth in the Economy certificate;

(c) Earn a high school diploma by passing the Adult Education Section-approved assessment; or

(d) Enroll in vocational training designed to equip him or her for suitable employment.

(iii) If the defendant is serving a suspended sentence or is on probation at the end of the study or training required by subdivision (e)(1)(B)(i) of this section, he or she shall work in suitable employment for the remainder of his or her suspended sentence or probation or for three (3) years, whichever occurs earlier; and

(2) Give the defendant a written statement explicitly setting forth the conditions under which he or she is being released.

(f)

(1) If the court suspends imposition of sentence on a defendant or places him or her on probation conditioned upon his or her making restitution under subdivision (c)(6) of this section, the court, by concurrence of the victim, defendant, and the prosecuting authority, shall determine the amount to be paid as restitution.

(2) After considering the assets, financial condition, and occupation of the defendant, the court shall further determine:

(A) Whether restitution shall be total or partial;

(B) The amounts to be paid if by periodic payments; and

(C) If a personal service is contemplated, the reasonable value and rate of compensation for the personal service rendered to the victim.

(g)

(1) In a case in which counsel has been appointed to represent a defendant due to the defendant's indigency and the court suspends imposition of sentence or places a defendant on probation at the time of disposition, the court shall revisit the issue of the defendant's indigency.

(2)

(A) When appropriate and when the defendant is financially able to do so, the court may assess an attorney's fee to be paid by the defendant as part of his or her suspension or probation.

(B) The amount of the assessed attorney's fee shall be commensurate with the defendant's ability to pay.

(C) The assessed attorney's fee shall be paid to the state as a means of partial reimbursement for providing appointed counsel.

(3) In no event is failure to pay an assessed attorney's fee, standing alone, a ground for the revocation of a suspension or probation.

(4)

(A) The assessed attorney's fee under subdivision (g)(2) of this section shall be collected by the county or city official, agency, or department designated under § 16-13-709 as primarily responsible for the collection of fines assessed in a circuit court or district court of this state.

(B) On or before the tenth day of each month, the county or city official, agency, or department described in subdivision (g)(4)(A) of this section shall remit any assessed attorney's fee collected to the Arkansas Public Defender Commission on a form provided by the commission.

(C) The commission shall deposit the money collected into a separate account within the State Central Services Fund to be known as "Public Defender Attorney Fees" to be used solely to defray costs for the commission.

(h) In addition to other available sanctions, a person sentenced prior to August 1, 2017, who is on probation under this section has the option to be sanctioned administratively under § 16-93-306(d) as it existed at the time of his or her sentence or as § 16-93-306 exists as of August 1, 2017.

(i)

(1) Unless specified otherwise in subsection (g) of this section and § 16-87-213, the moneys collected by the courts under subsection (g) of this section and § 16-87-213 shall be deposited into the State Treasury to the credit of the State Central Services Fund.

(2) If Arkansas law requires that the fees levied under subsection (g) of this section be deposited into the State Administration of Justice Fund, the Treasurer of State shall transfer the amount of the fees collected each month under subsection (g) of this section from the State Administration of Justice Fund to the State Central Services Fund

## History

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Acts 1975, No. 280, § 1203; 1977, No. 474, §§ 3, 9; 1977, No. 482, § 3; 1985, No. 315, § 1; A.S.A. 1947, § 41-1203; Acts 1989, No. 305, § 1; 1993, No. 119, § 1; 1997, No. 281, § 1; 1999, No. 231, § 1; 1999, No. 1564, § 6; 1999, No. 1569, § 2; 2003, No. 1765, § 1; 2011, No. 570, § 7; 2015, No. 1198, § 1; 2017, No. 423, § 1; 2019, No. 871, § 17; 2019, No. 910, § 131.

# A.C.A. § 5-4-405

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 4 Disposition of Offenders](#)
- [Subchapter 4 — Imprisonment](#)

### 5-4-405. Delayed release for certain offenders.

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(a) As used in this section:

- (1) "Aggravating circumstance" means a defendant purposely selected the victim because the victim was a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics;
- (2) "Delayed release" means that a person who receives a sentence of imprisonment is not eligible for parole unless the person has served at least eighty percent (80%) of his or her sentence;
- (3) "Purposely selected the victim" does not mean that a defendant's mere abstract belief or expression was hostile or contrary to the victim's being a member of or was associated with a recognizable and identifiable group or class who share mental, physical, biological, cultural, political, or religious beliefs or characteristics; and
- (4) "Serious felony involving violence" means:
  - (A) Murder in the first degree, § 5-10-102;
  - (B) Murder in the second degree, § 5-10-103;
  - (C) Battery in the first degree, § 5-13-201;
  - (D) Aggravated assault, § 5-13-204;
  - (E) Terroristic threatening, § 5-13-301, if a felony offense;
  - (F) Terroristic act, § 5-13-310;
  - (G) Arson, § 5-38-301;
  - (H) Unlawful discharge of a firearm from a vehicle, § 5-74-107; and
  - (I) An attempt, a solicitation, or a conspiracy to commit an offense listed in this subdivision (a)(4) if the attempt, solicitation, or conspiracy itself is a felony.

(b)

(1)

(A) A person who commits a serious felony involving violence is subject to delayed release if the state proves beyond a reasonable doubt that the person committed a serious felony involving violence under an aggravating circumstance.

(B) In order to seek delayed release under this section, the state shall set out the allegation in the indictment, in the information, or in a separate filing.

(2) If the finder of fact is the circuit court, the state may present evidence of an aggravating circumstance during its case-in-chief, and if the circuit court finds the person guilty and sentences the person to a term of imprisonment, the circuit court shall make the determination as to whether the state proved beyond a reasonable doubt that the person committed a serious felony involving violence under an aggravating circumstance and sentence the person accordingly.

(3)

(A) If the finder of fact is a jury, the jury shall first hear all evidence relevant to the serious felony involving violence with which the person is charged and shall retire to reach a verdict of guilt or innocence on the charge.

(B) If the person is found guilty of the serious felony involving violence, the circuit court shall then instruct the jury that the state seeks a sentence of imprisonment that would provide for delayed release.



- (C) The state may then offer additional evidence and argument that one (1) or more aggravating circumstances existed, which the person may rebut with his or her own evidence and argument.
- (D) The jury shall retire again and then determine a sentence and, if the sentence includes a term of imprisonment, a finding as to whether the person is subject to delayed release.
- (c) This section does not:
- (1) Interfere with the exercise of rights protected by the United States Constitution or the Arkansas Constitution, including without limitation the right of clergy to express religious beliefs during a religious service or ceremony;
  - (2) Serve as a basis to create a protected classification or prohibit discrimination under the Intrastate Commerce Improvement Act, § 14-1-401 et seq.; or
  - (3) Expand or contract the protections afforded by the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq.
- (d) This section shall not be altered, broadened, or narrowed through federal or state executive action.

## History

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Acts 2021, No. 681, § 1.

# A.C.A. § 5-4-501

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 4 Disposition of Offenders](#)
- [Subchapter 5 — Extended Term of Imprisonment](#)

5-4-501. Habitual offenders — Sentencing for felony. [Effective until January 1, 2024.]

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(a)

(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and shall be sentenced to an extended term of imprisonment as set forth in subdivision (a)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than those enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies or who has been found guilty of more than one (1) but fewer than four (4) felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (c) of this section or who has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (c) of this section; or

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after August 31, 1997; and

(ii) Has previously been convicted of more than one (1) felony but fewer than four (4) felonies not enumerated in subsection (d) of this section or has been found guilty of more than one (1) but fewer than four (4) felonies not enumerated in subsection (d) of this section.

(2) The extended term of imprisonment for a defendant described in subdivision (a)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than sixty (60) years, or life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than fifty (50) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than thirty (30) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than twenty (20) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than twelve (12) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than five (5) years more than the maximum sentence for the unclassified felony; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment not less than ten (10) years nor more than fifty (50) years, or life.

(b)

(1) A defendant meeting the following criteria may be sentenced to pay any fine authorized by law for the felony conviction and shall be sentenced to an extended term of imprisonment as set forth in subdivision (b)(2) of this section:

(A) A defendant who:

(i) Is convicted of a felony other than a felony enumerated in subsections (c) and (d) of this section committed after June 30, 1993; and

(ii) Has previously been convicted of four (4) or more felonies or who has been found guilty of four (4) or more felonies;

(B) A defendant who:

(i) Is convicted of any felony enumerated in subsection (c) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (c) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (c) of this section; or

(C) A defendant who:

(i) Is convicted of any felony enumerated in subsection (d) of this section committed after June 30, 1997; and

(ii) Has previously been convicted of four (4) or more felonies not enumerated in subsection (d) of this section or who has been found guilty of four (4) or more felonies not enumerated in subsection (d) of this section.

(2) The extended term of imprisonment for a defendant described in subdivision (b)(1) of this section is as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than ten (10) years nor more than life;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than six (6) years nor more than sixty (60) years;

(C) For a conviction of a Class B felony, a term of imprisonment of not less than five (5) years nor more than forty (40) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than three (3) years nor more than thirty (30) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not more than fifteen (15) years;

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than two (2) times the maximum sentence for the unclassified felony offense; and

(G) For a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment not less than ten (10) years nor more than fifty (50) years, or life.

(c)

(1) Except as provided in subdivision (c)(3) of this section, a defendant who is convicted of a serious felony involving violence enumerated in subdivision (c)(2) of this section and who previously has been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the serious felony involving violence conviction and shall be sentenced:

(A) To imprisonment for a term of not less than forty (40) years nor more than eighty (80) years, or life; and

(B) Without eligibility for parole or community correction transfer except under § 16-93-615.

(2) As used in this subsection, "serious felony involving violence" means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102, involving an activity making it a Class Y felony;

(iv) Aggravated robbery, § 5-12-103;

(v) Terroristic act, § 5-13-310, involving an activity making it a Class Y felony;

(vi) Rape, § 5-14-103;

(vii) Sexual assault in the first degree, § 5-14-124;

(viii) Causing a catastrophe, § 5-38-202(a);

(ix) Aggravated residential burglary, § 5-39-204; or

(x) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or

(B) A conviction of a comparable serious felony involving violence from another jurisdiction.

(3) A defendant who is convicted of rape, § 5-14-103, or sexual assault in the first degree, § 5-14-124, involving a victim less than fourteen (14) years of age and who has previously been convicted of one (1) or more of the serious felonies involving violence enumerated in subdivision (c)(2) of this section may be sentenced to pay any fine authorized by law for the rape or sexual assault in the first degree conviction and shall be sentenced to life in prison without the possibility of parole.

(4)

(A) The following procedure governs a trial at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the serious felony involving violence with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)

(a) If the defendant is found guilty of the serious felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of a prior serious felony involving violence and shall determine the number of prior serious felony involving violence convictions, if any.

(b) The defendant has the right to hear and controvert evidence described in subdivision

(c)(4)(A)(ii)(a) of this section and to offer evidence in his or her support;

(iii)

(a) The trial court shall then instruct the jury as to the number of prior convictions for a serious felony involving violence and the statutory sentencing range.

(b) The jury may be advised as to the nature of a prior serious felony involving violence conviction and the date and place of a prior serious felony involving violence conviction; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to an enumerated serious felony involving violence under Arkansas criminal law lies within the discretion of the trial judge at the time of sentencing.

(d)

(1) A defendant who is convicted of a felony involving violence enumerated in subdivision (d)(2) of this section and who previously has been convicted of two (2) or more of the felonies involving violence enumerated in subdivision (d)(2) of this section may be sentenced to pay any fine authorized by law for the felony involving violence conviction and shall be sentenced to an extended term of imprisonment without eligibility for parole or community correction transfer except under § 16-93-615 as follows:

(A) For a conviction of a Class Y felony, a term of imprisonment of not less than life in prison;

(B) For a conviction of a Class A felony, a term of imprisonment of not less than forty (40) years nor more than life in prison;

(C) For a conviction of a Class B felony or for a conviction of an unclassified felony punishable by life imprisonment, a term of imprisonment of not less than thirty (30) years nor more than sixty (60) years;

(D) For a conviction of a Class C felony, a term of imprisonment of not less than twenty-five (25) years nor more than forty (40) years;

(E) For a conviction of a Class D felony, a term of imprisonment of not less than twenty (20) years nor more than forty (40) years; and

(F) For a conviction of an unclassified felony punishable by less than life imprisonment, a term of imprisonment not more than three (3) times the maximum sentence for the unclassified felony offense.

(2) As used in this subsection, "felony involving violence" means:

(A) Any of the following felonies:

(i) Murder in the first degree, § 5-10-102;

(ii) Murder in the second degree, § 5-10-103;

(iii) Kidnapping, § 5-11-102;

(iv) Aggravated robbery, § 5-12-103;

(v) Rape, § 5-14-103;

(vi) Battery in the first degree, § 5-13-201;

(vii) Terroristic act, § 5-13-310;

(viii) Sexual assault in the first degree, § 5-14-124;

(ix) Sexual assault in the second degree, § 5-14-125;

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

(xi) Residential burglary, § 5-39-201(a);

- (xii) Aggravated residential burglary, § 5-39-204;
- (xiii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (xiv) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;
- (xv) A felony attempt, solicitation, or conspiracy to commit:
  - (a) Capital murder, § 5-10-101;
  - (b) Murder in the first degree, § 5-10-102;
  - (c) Murder in the second degree, § 5-10-103;
  - (d) Kidnapping, § 5-11-102;
  - (e) Aggravated robbery, § 5-12-103;
  - (f) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony;
  - (g) Rape, § 5-14-103;
  - (h) Battery in the first degree, § 5-13-201;
  - (i) Domestic battering in the first degree, § 5-26-303;
  - (j) Residential burglary, § 5-39-201(a); or
  - (k) Aggravated residential burglary, § 5-39-204; or
- (xvi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; or
- (B) A conviction of a comparable felony involving violence from another jurisdiction.

(3)

(A) The following procedure governs a trial at which a sentence to an extended term of imprisonment is sought pursuant to this subsection:

(i) The jury shall first hear all evidence relevant to the felony involving violence with which the defendant is currently charged and shall retire to reach a verdict of guilt or innocence on this charge;

(ii)

(a) If the defendant is found guilty of the felony involving violence, out of the hearing of the jury the trial court shall hear evidence of whether the defendant has pleaded guilty or nolo contendere to or been found guilty of two (2) or more prior felonies involving violence and shall determine the number of prior felony involving violence convictions, if any.

(b) The defendant has the right to hear and controvert evidence described in subdivision

(d)(3)(A)(ii)(a) of this section and to offer evidence in his or her support;

(iii)

(a) The trial court shall then instruct the jury as to the number of prior felony involving violence convictions and the statutory sentencing range.

(b) The jury may be advised as to the nature of a prior felony involving violence conviction and the date and place of a prior felony involving violence conviction; and

(iv) The jury shall retire again and then determine a sentence within the statutory range.

(B) The determination of whether a felony conviction from another jurisdiction is comparable to an enumerated felony involving violence under Arkansas criminal law lies within the discretion of the trial judge at the time of sentencing.

(e)

(1) For the purpose of determining whether a defendant has previously been convicted or found guilty of two (2) or more felonies, a conviction or finding of guilt of burglary, § 5-39-201, and of the felony that was the object of the burglary are considered a single felony conviction or finding of guilt.

(2) A conviction or finding of guilt of an offense that was a felony under the law in effect prior to January 1, 1976, is considered a previous felony conviction or finding of guilt.

(f) For the purposes of determining whether a defendant has previously been convicted of a serious felony involving violence or a felony involving violence under subsections (c) and (d) of this section, the entry of a plea of guilty or nolo contendere or a finding of guilt by a court to a felony enumerated in subsections (c) and (d) of this section, respectively, as a result of which a court places the defendant on a suspended imposition of sentence, a suspended sentence, or probation, or sentences the defendant to the Division of Correction, is considered a previous felony conviction.

(g) Any defendant deemed eligible to be sentenced under a provision of both subsections (c) and (d) of this section shall be sentenced only under subsection (d) of this section.

(h) If the provisions of subsection (c) or subsection (d) of this section, or both, are held invalid by a court, the defendant's case shall be remanded to the trial court for resentencing of the defendant under the provisions of subsections (a) and (b) of this section.

(i) For the purpose of determining under this section the number of felonies for which a defendant has been convicted, if the defendant was previously convicted of a felony for possession of a controlled

substance under the Uniform Controlled Substances Act, § 5-64-101 et seq., and the defendant also was convicted of a felony for possession of drug paraphernalia under § 5-64-443 stemming from the same set of facts, the two (2) felonies shall be considered as one (1) felony.

(j) For the purpose of determining under this section the number of felonies for which a defendant has been convicted, if the defendant was previously convicted of a felony for possession of fentanyl, § 5-64-421, and the defendant also was convicted of a felony for knowingly exposing another person to fentanyl in the first degree, § 5-13-214(b), or knowingly exposing another person to fentanyl in the second degree, § 5-13-214(c), stemming from the same set of facts, the two (2) felonies shall be considered as one (1) felony.

## History

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Acts 1975, No. 280, § 1001; 1977, No. 474, § 4; 1981, No. 620, § 9; 1983, No. 409, § 3; A.S.A. 1947, § 41-1001; Acts 1993, No. 532, § 7; 1993, No. 550, § 7; 1995, No. 1009, § 1; 1995, No. 1011, § 1; 1997, No. 1197, § 1; 2001, No. 1553, § 6; 2003, No. 1390, § 2; 2006 (1st Ex. Sess.), No. 5, § 1; 2007, No. 827, §§ 15, 16; 2007, No. 852, § 1; 2009, No. 1395, §§ 1, 2; 2011, No. 570, §§ 19, 20; 2015, No. 895, § 3; 2017, No. 367, §§ 2-4; 2019, No. 910, § 659; 2021, No. 453, § 1; 2021, No. 821, §§ 1, 2; 2023, No. 739, § 1.

# A.C.A. § 5-4-702

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 4 Disposition of Offenders](#)
- [Subchapter 7 — Enhanced Penalties for Certain Offenses](#)

5-4-702. Enhanced penalties for offenses committed in presence of a child. [Effective January 1, 2024.]

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(a) A person who commits any of the following offenses 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 if the offense is committed in the presence of a child:

- (1) Capital murder, § 5-10-101;
- (2) Murder in the first degree, § 5-10-102;
- (3) Murder in the second degree, § 5-10-103;
- (4) Aggravated robbery, § 5-12-103;
- (5) A felony offense of assault or battery under § 5-13-201 et seq.;
- (6) Rape, § 5-14-103;
- (7) Sexual assault in the second degree, § 5-14-125;
- (8) A felony offense of domestic battering or assault on a family or household member under §§ 5-26-303 — 5-26-309;
- (9) Unlawful discharge of a firearm from a vehicle, § 5-74-107; or
- (10) Terroristic act, § 5-13-310.

(b) Any person who commits the offense of aggravated cruelty to a dog, cat, or equine under § 5-62-104 may be subject to an enhanced sentence of an additional term of imprisonment not to exceed five (5) years if the offense is committed in the presence of a child.

(c)

(1) To seek an enhanced penalty established in this section, a prosecuting attorney shall notify the defendant in writing that the defendant is subject to the enhanced penalty.

(2) If the defendant is charged by information or indictment, the prosecuting attorney may include the written notice in the information or indictment.

(d) The enhanced portion of the sentence is consecutive to any other sentence imposed.

(e) Any person convicted under this section is not eligible for early release on parole, transfer to post-release supervision, or community correction transfer for the enhanced portion of the sentence.

## History

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Acts 2001, No. 1707, § 2; 2007, No. 1047, § 1; 2009, No. 33, § 1; 2009, No. 936, § 1; 2017, No. 389, § 1; 2019, No. 324, § 1; 2023, No. 659, §§ 19, 20.

## A.C.A. § 5-4-707

### Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 4 Disposition of Offenders](#)
- [Subchapter 7 — Enhanced Penalties for Certain Offenses](#)

5-4-707. Additional term of imprisonment for offense constituting violence against church or other place of worship. [Effective until January 1, 2024.]

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(a) As used in this section, "serious felony involving violence" means:

- (1) Murder in the first degree, § 5-10-102;
  - (2) Murder in the second degree, § 5-10-103;
  - (3) Battery in the first degree, § 5-13-201;
  - (4) Aggravated assault, § 5-13-204;
  - (5) Terroristic threatening, § 5-13-301, if a felony;
  - (6) Terroristic act, § 5-13-310;
  - (7) Causing a catastrophe, § 5-38-202(a);
  - (8) Arson, § 5-38-301;
  - (9) Terrorism, § 5-54-205;
  - (10) A felony offense under § 5-54-201;
  - (11) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
  - (12) Criminal use of prohibited weapons, § 5-73-104, involving an activity making it a Class B felony;
- or

(13) A felony attempt, solicitation, or conspiracy to commit an offense listed in this subsection, if the attempt, solicitation, or conspiracy itself is a felony.

(b) A person is subject to an additional term of imprisonment under this section if the person:

- (1) Purposely selected the victim of an offense committed by the person because the victim was present on the grounds of or in a church or other place of worship at the time of the offense; and
- (2) Committed a serious felony involving violence against the victim.

(c) If an additional term of imprisonment is sought under this section, the information or indictment shall include:

- (1) That the additional term of imprisonment under this section is being sought; and
  - (2) The allegations supporting the imposition of the additional term of imprisonment under this section.
- (d) The additional term of imprisonment under this section is for a minimum of one (1) year but no more than ten (10) years in the Division of Correction.

(e) The additional term of imprisonment under this section is consecutive to any other sentence imposed.

(f) A person receiving an additional term of imprisonment under this section is not eligible for early release on parole or community correction transfer for the additional term of imprisonment.

### History

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Acts 2019, No. 1046, § 1.



# A.C.A. § 5-5-201

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 2 — Forfeiture of Conveyances Used in Commission of Certain Crimes](#)

### 5-5-201. Forfeiture requirement — Exceptions.

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(a) Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel, is subject to forfeiture under this subchapter if it is used in the commission or attempt of:

- (1) A burglary;
- (2) A robbery;
- (3) A theft;
- (4) An arson; or
- (5) Trafficking of persons, § 5-18-103.

(b) However:

- (1) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this subchapter unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission or attempt to commit the offense;
- (2) A conveyance is not subject to forfeiture under this subchapter by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent and without the knowledge or consent of any person having possession, care, or control of the conveyance with the owner's permission; and
- (3) A forfeiture of a conveyance encumbered by a security interest is subject to the security interest of the secured party if the secured party neither had knowledge of nor consented to the use of the conveyance in the commission or attempt to commit the offense.

(c)

(1) A person who uses or possesses one (1) or more of the following items or conveyances in the commission of a second or subsequent offense for criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, that occurs within five (5) years of a prior offense of criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, is subject to that item's or conveyance's being seized and forfeited under this subchapter:

- (A) An all-terrain vehicle, as defined under § 27-21-102;
- (B) A conveyance, including an aircraft, motor vehicle, or vessel;
- (C) A harvesting device, as defined under § 5-39-101;
- (D) A killing device, as defined under § 5-39-101; or
- (E) A tool or other implement.

(2) A person or entity that has a valid security interest in an item or conveyance subject to seizure and forfeiture under this subsection is entitled to notice of any forfeiture proceeding as well as the right to intervene in the forfeiture proceeding in order to secure and represent the person's or entity's interest in the item or conveyance to be forfeited.

### History

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Acts 1985, No. 238, § 1; A.S.A. 1947, § 41-1403; Acts 2013, No. 1157, § 2; 2013, No. 1363, § 1; 2017, No. 877, § 1.

# A.C.A. § 5-10-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 10 Homicide](#)
- [Subchapter 1 — Offenses Generally](#)

### 5-10-101. Capital murder. [Effective until January 1, 2024.]

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- (a) A person commits capital murder if:
- (1) Acting alone or with one (1) or more other persons:
    - (A) The person commits or attempts to commit:
      - (i) Terrorism, as defined in § 5-54-205;
      - (ii) Rape, § 5-14-103;
      - (iii) Kidnapping, § 5-11-102;
      - (iv) Vehicular piracy, § 5-11-105;
      - (v) Robbery, § 5-12-102;
      - (vi) Aggravated robbery, § 5-12-103;
      - (vii) Residential burglary, § 5-39-201(a);
      - (viii) Commercial burglary, § 5-39-201(b);
      - (ix) Aggravated residential burglary, § 5-39-204;
    - (x) A felony violation of the Uniform Controlled Substances Act, §§ 5-64-101 — 5-64-508, involving an actual delivery of a controlled substance; or
    - (xi) First degree escape, § 5-54-110; and
  - (B) In the course of and in furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of a person under circumstances manifesting extreme indifference to the value of human life;
- (2) Acting alone or with one (1) or more other persons:
  - (A) The person commits or attempts to commit arson, § 5-38-301; and
  - (B) In the course of and in furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person;
- (3) With the premeditated and deliberated purpose of causing the death of any law enforcement officer, jailer, prison official, firefighter, judge or other court official, probation officer, parole officer, any military personnel, or teacher or school employee, when such person is acting in the line of duty, the person causes the death of any person;
- (4) With the premeditated and deliberated purpose of causing the death of another person, the person causes the death of any person;
- (5) With the premeditated and deliberated purpose of causing the death of the holder of any public office filled by election or appointment or a candidate for public office, the person causes the death of any person;
- (6) While incarcerated in the Division of Correction or the Division of Community Correction, the person purposely causes the death of another person after premeditation and deliberation;
- (7) Pursuant to an agreement that the person cause the death of another person in return for anything of value, he or she causes the death of any person;
- (8) The person enters into an agreement in which a person is to cause the death of another person in return for anything of value, and a person hired pursuant to the agreement causes the death of any person;
- (9)

(A) Under circumstances manifesting extreme indifference to the value of human life, the person knowingly causes the death of a person fourteen (14) years of age or younger at the time the murder was committed if the defendant was eighteen (18) years of age or older at the time the murder was committed.

(B) It is an affirmative defense to any prosecution under this subdivision (a)(9) arising from the failure of the parent, guardian, or person standing in loco parentis to provide specified medical or surgical treatment, that the parent, guardian, or person standing in loco parentis relied solely on spiritual treatment through prayer in accordance with the tenets and practices of an established church or religious denomination of which he or she is a member; or

(10) The person:

(A) Purposely discharges a firearm from a vehicle at a person or at a vehicle, conveyance, or a residential or commercial occupiable structure that he or she knows or has good reason to believe to be occupied by a person; and

(B) Thereby causes the death of another person under circumstances manifesting extreme indifference to the value of human life.

(b) It is an affirmative defense to any prosecution under subdivision (a)(1) of this section for an offense in which the defendant was not the only participant that the defendant did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid in the homicidal act's commission.

(c)

(1) Capital murder is punishable as follows:

(A) If the defendant was eighteen (18) years of age or older at the time he or she committed the capital murder:

(i) Death; or

(ii) Life imprisonment without parole under §§ 5-4-601 — 5-4-605, 5-4-607, and 5-4-608; or

(B) If the defendant was younger than eighteen (18) years of age at the time he or she committed the capital murder, life imprisonment with the possibility of parole after serving a minimum of thirty (30) years' imprisonment.

(2) For any purpose other than disposition under §§ 5-4-101 — 5-4-104, 5-4-201 — 5-4-204, 5-4-301 — 5-4-307, 5-4-401 — 5-4-404, 5-4-501 — 5-4-504, 5-4-601 — 5-4-605, 5-4-607, 5-4-608, 16-93-307, 16-93-313, and 16-93-314, capital murder is a Class Y felony.

## History

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Acts 1975, No. 280, § 1501; 1983, No. 341, § 1; 1985, No. 840, § 1; A.S.A. 1947, § 41-1501; Acts 1987, No. 242, § 2; 1989, No. 97, § 1; 1989, No. 856, § 1; 1991, No. 683, § 1; 1993, No. 1189, § 2; 1995, No. 258, § 1; 1995, No. 800, § 1; 2003, No. 1342, § 5; 2007, No. 827, §§ 19, 20; 2009, No. 748, § 6; 2009, No. 1395, § 3; 2011, No. 570, § 22; 2013, No. 1490, § 3; 2017, No. 539, § 6; 2019, No. 910, § 666.

# A.C.A. § 5-10-102

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 10 Homicide](#)
- [Subchapter 1 — Offenses Generally](#)

### 5-10-102. Murder in the first degree. [Effective until January 1, 2024.]

---

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

(1) Acting alone or with one (1) or more other persons:

(A) The person commits or attempts to commit a felony; and

(B) In the course of and in the furtherance of the felony or in immediate flight from the felony, the person or an accomplice causes the death of any person under circumstances manifesting extreme indifference to the value of human life;

(2) With a purpose of causing the death of another person, the person causes the death of another person; or

(3) The person knowingly causes the death of a person fourteen (14) years of age or younger at the time the murder was committed.

(b) It is an affirmative defense to any prosecution under subdivision (a)(1) of this section for an offense in which the defendant was not the only participant that the defendant:

(1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the homicidal act's commission;

(2) Was not armed with a deadly weapon;

(3) Reasonably believed that no other participant was armed with a deadly weapon; and

(4) Reasonably believed that no other participant intended to engage in conduct that could result in death or serious physical injury.

(c)

(1) Murder in the first degree is a Class Y felony.

(2) Unless the application of § 16-93-621 results in a person's being eligible for parole at an earlier date, if a person was younger than eighteen (18) years of age at the time he or she committed murder in the first degree and is sentenced to life imprisonment, the person is eligible for parole after serving a minimum of twenty-five (25) years' imprisonment.

## History

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Acts 1975, No. 280, § 1502; 1981, No. 620, § 10; A.S.A. 1947, § 41-1502; Acts 1987 (1st Ex. Sess.), No. 52, § 1; 1989, No. 856, § 2; 1991, No. 683, § 2; 2017, No. 539, § 7.



# A.C.A. § 5-10-104

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 10 Homicide](#)
- [Subchapter 1 — Offenses Generally](#)

### 5-10-104. Manslaughter. [Effective until January 1, 2024.]

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- (a) A person commits manslaughter if:
- (1)
- (A) The person causes the death of another person under circumstances that would be murder, except that he or she causes the death under the influence of extreme emotional disturbance for which there is reasonable excuse.
- (B) The reasonableness of the excuse is determined from the viewpoint of a person in the actor's situation under the circumstances as the actor believed them to be;
- (2) The person purposely causes or aids another person to commit suicide;
- (3) The person recklessly causes the death of another person; or
- (4) Acting alone or with one (1) or more persons:
- (A) The person commits or attempts to commit a felony; and
- (B) In the course of and in furtherance of the felony or in immediate flight from the felony:
- (i) The person or an accomplice negligently causes the death of any person; or
- (ii) Another person who is resisting the felony or flight causes the death of any person.
- (b) It is an affirmative defense to any prosecution under subdivision (a)(4) of this section for an offense in which the defendant was not the only participant that the defendant:
- (1) Did not commit the homicidal act or in any way solicit, command, induce, procure, counsel, or aid the homicidal act's commission;
- (2) Was not armed with a deadly weapon;
- (3) Reasonably believed that no other participant was armed with a deadly weapon; and
- (4) Reasonably believed that no other participant intended to engage in conduct which could result in death or serious physical injury.
- (c) Manslaughter is a Class C felony.

## History

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Acts 1975, No. 280, § 1504; A.S.A. 1947, § 41-1504; Acts 2007, No. 827, § 21.

# A.C.A. § 5-10-105

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 10 Homicide](#)
- [Subchapter 1 — Offenses Generally](#)

### 5-10-105. Negligent homicide. [Effective until January 1, 2024.]

---

(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

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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.

# A.C.A. § 5-10-209

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 10 Homicide](#)
- [Subchapter 2 — Death by Delivery](#)

5-10-209. Factors considered when determining whether person possessed controlled substance for personal use.

---

For purposes of this subchapter, possession of a controlled substance or counterfeit substance for personal use may be demonstrated through the consideration of certain factors, including without limitation:

- (1) The person does not possess the means to weigh, separate, or package the controlled substance or counterfeit substance;
- (2) The person does not possess a record indicating a drug-related transaction;
- (3) The controlled substance or counterfeit substance is not separated or packaged in a manner to facilitate delivery;
- (4) The person does not possess a firearm that is in the immediate physical control of the person at the time of the delivery or conveyance of the controlled substance or counterfeit substance; and
- (5) The person does not possess other controlled substances or counterfeit substances at the time of the delivery or conveyance.

## History

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Acts 2023, No. 584, § 2.



# A.C.A. § 5-12-103

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 12 Robbery](#)

### 5-12-103. Aggravated robbery.

---

(a) A person commits aggravated robbery if he or she commits robbery as defined in § 5-12-102, and the person:

- (1) Is armed with a deadly weapon;
- (2) Represents by word or conduct that he or she is armed with a deadly weapon; or
- (3) Inflicts or attempts to inflict death or serious physical injury upon another person.

(b) Aggravated robbery is a Class Y felony.

### History

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Acts 1975, No. 280, § 2102; 1979, No. 1118, § 1; 1981, No. 620, § 13; A.S.A. 1947, § 41-2102; Acts 1995, No. 1296, § 2.

# A.C.A. § 5-13-201

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-13-201. Battery in the first degree.

---

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

(1) With the purpose of causing serious physical injury to another person, the person causes serious physical injury to any person by means of a deadly weapon;

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

(3) The person causes serious physical injury to another person under circumstances manifesting extreme indifference to the value of human life;

(4) Acting alone or with one (1) or more other persons:

(A) The person commits or attempts to commit a felony; and

(B) In the course of and in furtherance of the felony or in immediate flight from the felony:

(i) The person or an accomplice causes serious physical injury to any person under circumstances manifesting extreme indifference to the value of human life; or

(ii) Another person who is resisting the felony or flight causes serious physical injury to any person;

(5) With the purpose of causing serious physical injury to an unborn child or to a woman who is pregnant with an unborn child, the person causes serious physical injury to the unborn child;

(6) The person knowingly causes physical injury to a pregnant woman in the commission of a felony or a Class A misdemeanor, and in so doing, causes serious physical injury to the pregnant woman's unborn child, and the unborn child is subsequently born alive;

(7) The person knowingly, without legal justification, causes serious physical injury to a person he or she knows to be sixty (60) years of age or older or twelve (12) years of age or younger;

(8) With the purpose of causing physical injury to another person, the person causes physical injury to any person by means of a firearm; or

(9) The person knowingly causes serious physical injury to any person four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life.

(b) It is an affirmative defense in any prosecution under subdivision (a)(4) of this section in which the defendant was not the only participant that the defendant:

(1) Did not commit the battery or in any way solicit, command, induce, procure, counsel, or aid the battery's commission;

(2) Was not armed with a deadly weapon;

(3) Reasonably believed that no other participant was armed with a deadly weapon; and

(4) Reasonably believed that no other participant intended to engage in conduct that could result in serious physical injury.

(c)

(1) Except as provided in subdivisions (c)(2) and (3) of this section, battery in the first degree is a Class B felony.

(2) Battery in the first degree is a Class Y felony under the circumstances described in subdivision (a)(2) or subdivision (a)(9) of this section.

(3) Battery in the first degree is a Class Y felony if the injured person is a law enforcement officer or an employee of a correctional facility, and is acting in the line of duty.

(d) As used in this section, “employee of a correctional facility” means a person who is employed by or working under a professional services contract with the Division of Correction or the Division of Community Correction.

## History

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Acts 1975, No. 280, § 1601; A.S.A. 1947, § 41-1601; Acts 1987, No. 482, § 1; 1995, No. 360, § 1; 1995, No. 1305, § 1; 2005, No. 1994, § 474; 2007, No. 622, § 1; 2007, No. 709, § 2; 2007, No. 827, § 26; 2019, No. 498, § 1; 2019, No. 582, § 1.

# A.C.A. § 5-13-202

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 2 — Offenses Generally](#)

### 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;

(B) While operating or in actual physical control of a motor vehicle or motorboat 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

(C) Who is four (4) years of age or younger; 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 Division of Correction, the Division of Community Correction, or the Division of Youth 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 healthcare professional; or

(iv) Any other healthcare provider; or

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

(b)

(1) Battery in the second degree under subdivision (a)(3)(B) of this section is a Class C felony.

- (2) Otherwise, battery in the second degree is a Class D felony.  
(c) As used in this section, “motorboat” means the same as defined in § 5-65-102.

## History

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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; 2015, No. 104, §§ 1, 2; 2017, No. 333, § 1; 2019, No. 783, § 1; 2019, No. 910, § 667; 2021, No. 512, § 1.

# A.C.A. § 5-13-203

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-13-203. Battery in the third degree.

---

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

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

(2) The person recklessly causes physical injury to another person;

(3) The person negligently causes physical injury to another person by means of a deadly weapon;

(4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to another person by administering to the other person, without the other person's consent, any drug or other substance; or

(5) The person knowingly causes physical contact with a first responder by spitting, throwing, or otherwise transferring bodily fluids, pathogens, or human waste onto the person of the first responder.

(b)

(1) Battery in the third degree under subdivisions (a)(1)-(4) of this section is a Class A misdemeanor.

(2) Battery in the third degree under subdivision (a)(5) of this section is a Class A misdemeanor with a mandatory fine of two thousand five hundred dollars (\$2,500) and a mandatory minimum sentence of at least thirty (30) days of imprisonment for which the defendant is required to serve at least thirty (30) days before being released from imprisonment.

### History

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Acts 1975, No. 280, § 1603; A.S.A. 1947, § 41-1603; Acts 2021, No. 1014, § 2.

# A.C.A. § 5-13-204

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-13-204. Aggravated assault.

- 
- (a) A person commits aggravated assault if, under circumstances manifesting extreme indifference to the value of human life, he or she purposely:
- (1) Engages in conduct that creates a substantial danger of death or serious physical injury to another person;
  - (2) Displays a firearm in such a manner that creates a substantial danger of death or serious physical injury to another person; or
  - (3) Impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the chest, throat, or neck or by blocking the nose or mouth of the other person.
- (b) Aggravated assault is a Class D felony.
- (c) The provisions of this section do not apply to:
- (1) A law enforcement officer acting within the scope of his or her duty; or
  - (2) A person acting in self-defense or the defense of a third party.

### History

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Acts 1975, No. 280, § 1604; A.S.A. 1947, § 41-1604; Acts 2003, No. 1113, § 1; 2009, No. 332, § 1; 2019, No. 243, § 1.

# A.C.A. § 5-13-211

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-13-211. Aggravated assault upon a law enforcement officer or an employee of a correctional facility.

---

(a) A person commits aggravated assault upon a law enforcement officer or an employee of a correctional facility if:

(1) Under circumstances manifesting extreme indifference to the personal hygiene of the law enforcement officer or employee of the correctional facility, the person purposely engages in conduct that creates a potential danger of infection to the law enforcement officer or an employee of any state or local correctional facility while the law enforcement officer or employee of the state or local correctional facility is engaged in the course of his or her employment by causing a person whom the actor knows to be a law enforcement officer or employee of the state or local correctional facility to come into contact with saliva, blood, urine, feces, seminal fluid, or other bodily fluid by purposely throwing, tossing, expelling, or otherwise transferring the fluid or material; or

(2) He or she knowingly discharges a firearm with a purpose to cause serious physical injury or death to a law enforcement officer or an employee of a correctional facility while the law enforcement officer or employee of a correctional facility is acting within the scope of his or her official duties and the person:

(A) Is in custody as a result of a felony conviction;

(B) Is unlawfully at liberty after being sentenced to imprisonment as a result of a felony conviction;

(C) Has a felony conviction for a felony offense which contained as an element the use or threat of violence against another person or the creation of a substantial risk of death or serious physical injury to another person;

(D) Knowingly creates a substantial risk of serious physical injury or death to a person other than the law enforcement officer or the employee of a correctional facility;

(E) Causes the death of more than one (1) person;

(F) Is acting with a purpose to avoid or prevent an arrest or to escape from custody;

(G) Is acting with a purpose to obtain a pecuniary gain; or

(H) Is acting with a purpose to disrupt or hinder the lawful exercise of any government or political function.

(b) Aggravated assault upon a law enforcement officer or an employee of a correctional facility is:

(1) A Class D felony under subdivision (a)(1) of this section; or

(2) A Class Y felony under subdivision (a)(2) of this section.

(c) As used in this section, "contact with" includes without limitation contact with the skin, a face covering, a glove, or the uniform of a law enforcement officer or employee of a correctional facility.

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## History

Acts 1997, No. 1235, § 1; 2003, No. 1271, § 1; 2011, No. 277, § 1; 2017, No. 367, § 5; 2021, No. 596, § 1.



# A.C.A. § 5-13-213

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-13-213. Aggravated assault against first responder.

---

(a) A person commits aggravated assault against a first responder if:

(1) The person knowingly causes physical contact with a first responder by spitting, throwing, or otherwise transferring bodily fluids, pathogens, or human waste onto the person of the first responder or by throwing an object such as a brick, rock, bottle, projectile, firework, chemical agent, or explosive device that the person knows or reasonably should know could cause physical injury if the object struck the first responder; and

(2) The physical contact:

(A) Results in serious physical injury to the first responder;

(B) Involves the use of a deadly weapon;

(C) Involves the display of a firearm in such a manner that the display of the firearm creates a substantial danger of death or serious physical injury to another person; or

(D) Involves strangulation or attempted strangulation.

(b) Aggravated assault against a first responder is a Class C felony with a mandatory fine of ten thousand dollars (\$10,000) and a mandatory minimum sentence of at least ninety (90) days' imprisonment for which the defendant is required to serve at least ninety (90) days before being released from imprisonment.

## History

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Acts 2021, No. 1014, § 3; 2023, No. 736, § 2.

# A.C.A. § 5-13-310

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 13 Assault and Battery](#)
- [Subchapter 3 — Terroristic Threats and Acts](#)

### 5-13-310. Terroristic act.

- 
- (a) A person commits a terroristic act if, while not in the commission of a lawful act, the person:
- (1) Shoots at or in any manner projects an object at a conveyance which is being operated or which is occupied by another person with the purpose to cause injury to another person or damage to property; or
  - (2) Shoots at an occupiable structure with the purpose to cause injury to a person or damage to property.
- (b)
- (1) Upon conviction, any person who commits a terroristic act is guilty of a Class B felony.
  - (2) Upon conviction, any person who commits a terroristic act is guilty of a Class Y felony if the person with the purpose of causing physical injury to another person causes serious physical injury or death to any person.
- (c) This section does not repeal any law or part of a law in conflict with this section, but is supplemental to the law or part of a law in conflict.

### History

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Acts 1975, No. 312, §§ 1-3; 1979, No. 428, § 1; A.S.A. 1947, §§ 41-1651, 41-1652, 41-1652n; Acts 1993, No. 544, § 1; 2005, No. 197, § 1; 2007, No. 827, § 29.

# A.C.A. § 5-17-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 17 Death Threats](#)

### 5-17-101. Communicating a death threat concerning a school employee or student.

---

(a) A person commits the offense of communicating a death threat concerning a school employee or student if:

- (1) The person communicates to any other person a threat to cause the death of a school employee or student;
- (2) The threat involves the use of a firearm or other deadly weapon;
- (3) A reasonable person would believe the person making the threat intends to carry out the threat;
- (4) The person making the threat purposely engaged in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of the threatened act; and
- (5) There is a close temporal relationship between the threatened act and the substantial step.

(b) Conduct is not a substantial step under this section unless the conduct is strongly corroborative of the person's criminal purpose.

(c) Communicating a death threat concerning a school employee or student is a Class D felony.

(d) As used in this section, "school" means any:

- (1) Elementary school, junior high school, or high school;
- (2) Technical institute or post-secondary vocational-technical school; or
- (3) Two-year or four-year college or university.

## History

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Acts 2001, No. 1046, §§ 1, 2.

# A.C.A. § 5-26-303

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 26 Offenses Involving the Family](#)
- [Subchapter 3 — Domestic Battering and Assault](#)

### 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;

(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 or aggravated assault on 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;

(6) 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 firearm; or

(7) The person knowingly causes serious physical injury to a family or household member who is four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life.

(b)

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

(2) However, domestic battering in the first degree is a:

(A) Class Y felony under subdivision (a)(2) or subdivision (a)(7) of this section; or

(B) Class A felony under subsection (a) of this section if:

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

(ii) 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:

(a) Domestic battering in the first degree;

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

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

(d) Aggravated assault on a family or household member, § 5-26-306; or

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

### History

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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; 2017, No. 301, § 1; 2019, No. 498, § 2; 2023, No. 736, § 5; 2023, No. 849, §§ 1, 2.

# A.C.A. § 5-26-304

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 26 Offenses Involving the Family](#)
- [Subchapter 3 — Domestic Battering and Assault](#)

### 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:

(A) By means of a deadly weapon; or

(B) Who is four (4) years of age or younger; 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 reasonably 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 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;

(iv) Aggravated assault on a family or household member, § 5-26-306; or

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

### History

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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; 2021, No. 512, § 2; 2021, No. 1086, § 1; 2023, No. 736, § 6; 2023, No. 849, § 3.

# A.C.A. § 5-26-305

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 26 Offenses Involving the Family](#)
- [Subchapter 3 — Domestic Battering and Assault](#)

### 5-26-305. Domestic battering in the third degree.

---

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

- (1) With the purpose of causing physical injury to a family or household member, the person causes physical injury to a family or household member;
- (2) The person recklessly causes physical injury to a family or household member;
- (3) The person negligently causes physical injury to a family or household member by means of a deadly weapon; or
- (4) The person purposely causes stupor, unconsciousness, or physical or mental impairment or injury to a family or household member by administering to the family or household member, without the family or household member's consent, any drug or other substance.

(b)

(1) Domestic battering in the third degree is a Class A misdemeanor.

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

(A) Committed against a woman the person knew or reasonably 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 third degree:

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

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

(iii) Domestic battering in the third degree;

(iv) Aggravated assault on a family or household member, § 5-26-306; or

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

### History

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Acts 1979, No. 396, § 3; A.S.A. 1947, § 41-1655; Acts 1995, No. 1291, § 3; 1999, No. 1365, § 3; 2001, No. 1553, § 10; 2003, No. 944, § 3; 2003, No. 1079, § 1; 2005, No. 1994, § 481; 2009, No. 333, § 1; 2013, No. 417, § 3; 2015, No. 1155, § 5; 2021, No. 1086, § 2; 2023, No. 736, § 7.

# A.C.A. § 5-26-306

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 26 Offenses Involving the Family](#)
- [Subchapter 3 — Domestic Battering and Assault](#)

### 5-26-306. Aggravated assault on a family or household member.

---

(a) A person commits aggravated assault on a family or household member if, under circumstances manifesting extreme indifference to the value of human life, the person purposely:

- (1) Engages in conduct that creates a substantial danger of death or serious physical injury to a family or household member;
- (2) Displays a firearm in a manner that creates a substantial danger of death or serious physical injury to a family or household member; or
- (3) Impedes or prevents the respiration of a family or household member or the circulation of a family or household member's blood by applying pressure on the chest, throat, or neck or by blocking the nose or mouth of the family or household member.

(b) Aggravated assault on a family or household member is a Class D felony.

### History

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Acts 1979, No. 396, § 4; A.S.A. 1947, § 41-1656; Acts 1995, No. 1291, § 4; 2013, No. 418, § 1; 2019, No. 243, § 2.



# A.C.A. § 5-26-313

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 26 Offenses Involving the Family](#)
- [Subchapter 3 — Domestic Battering and Assault](#)

### 5-26-313. Notice.

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A person who is convicted of any misdemeanor of domestic violence shall be notified by the court that it is unlawful for the person to ship, transport, or possess a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(8) and (9), as they existed on January 1, 2007.

### History

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Acts 2007, No. 676, § 1.

# A.C.A. § 5-27-210

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 27 Offenses Against Children or Incompetents](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-27-210. Parental responsibility for student's firearm possession.

---

(a) As used in this section:

(1) "Firearm" means:

(A) Any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable; or

(B) Components that can readily be assembled into a device described in subdivision (a)(1)(A) of this section; and

(2) "Parent" means a parent, stepparent, legal guardian, or person in loco parentis or who has legal custody of a student pursuant to a court order and with whom the student resides.

(b) A parent of a minor is guilty of a Class B misdemeanor if:

(1) The parent knows that the minor is in illegal possession of a firearm in or upon:

(A) The premises of a public or private school;

(B) A public or private school's athletic stadium or other facility or building in which school-sponsored events are conducted; or

(C) A public park, playground, or civic center; and

(2) The parent fails to:

(A) Prevent the illegal possession; or

(B) Report the illegal possession to an appropriate school or law enforcement official.

### History

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Acts 1999, No. 1149, §§ 1, 2.

# A.C.A. § 5-36-103

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 36 Theft](#)
- [Subchapter 1 — General Provisions](#)

### 5-36-103. Theft of property. [Effective until January 1, 2024.]

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(a) A person commits theft of property if he or she knowingly:

- (1) Takes or exercises unauthorized control over or makes an unauthorized transfer of an interest in the property of another person with the purpose of depriving the owner of the property; or
- (2) Obtains the property of another person by deception or by threat with the purpose of depriving the owner of the property.

(b) Theft of property is a:

(1) Class B felony if:

- (A) The value of the property is twenty-five thousand dollars (\$25,000) or more;
- (B) The property is obtained by the threat of serious physical injury to any person or destruction of the occupiable structure of another person;
- (C) The property is obtained by threat and the actor stands in a confidential or fiduciary relationship to the person threatened; or
- (D) The property is:
  - (i) Anhydrous ammonia in any form;
  - (ii) A product containing any percentage of anhydrous ammonia in any form;
  - (iii) Utility property and the value of the property is five hundred dollars (\$500) or more; or
  - (iv) Oil and gas equipment, the value of the property is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000), and the person:
    - (a) Caused more than two hundred fifty dollars (\$250) in incidental damage to the owner of the oil and gas equipment during the commission of the offense; or
    - (b) Transported the oil and gas equipment across state lines to sell or dispose of the oil and gas equipment;

(2) Class C felony if:

- (A) The value of the property is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000);
  - (B) The property is obtained by threat;
  - (C) The property is a firearm valued at two thousand five hundred dollars (\$2,500) or more;
  - (D) The property is building material obtained from a permitted construction site and the value of the building material is five hundred dollars (\$500) or more;
  - (E) The value of the property is five hundred dollars (\$500) or more and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county; or
  - (F) The property is oil and gas equipment, the value of the property is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000), and the person:
    - (i) Caused more than two hundred fifty dollars (\$250) in incidental damage to the owner of the oil and gas equipment during the commission of the offense; or
    - (ii) Transported the oil and gas equipment across state lines to sell or dispose of the oil and gas equipment;
- (3) Class D felony if:

- (A) The value of the property is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000);
- (B) The property is a firearm valued at less than two thousand five hundred dollars (\$2,500);
- (C) The property is a:
  - (i) Credit card or credit card account number; or
  - (ii) Debit card or debit card account number;
- (D) The value of the property is at least one hundred dollars (\$100) or more but less than five hundred dollars (\$500) and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;
- (E) The property is livestock and the value of the livestock is in excess of two hundred dollars (\$200);
- (F) The property is an electric power line, gas line, water line, wire or fiber insulator, electric motor, or other similar apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling;
- (G) The property is a decorative or memorial item from a cemetery, graveyard, or a person's grave site and the offense is the actor's second or subsequent offense of theft of a decorative or memorial item from a cemetery, graveyard, or a person's grave site under this section;
- (H) The property is oil and gas equipment and the value of the oil and gas equipment is one thousand dollars (\$1,000) or less, and the person:
  - (i) Caused more than two hundred fifty dollars (\$250) in incidental damage to the owner of the oil and gas equipment during the commission of the offense; or
  - (ii) Transported the oil and gas equipment across state lines to sell or dispose of the oil and gas equipment; or
- (I) The property is a postal package removed from the curtilage of a residential occupiable structure or from a delivery vehicle at any point throughout the delivery route; or
- (4) Class A misdemeanor if:
  - (A) The value of the property is one thousand dollars (\$1,000) or less;
  - (B) The property has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost; or
  - (C) The property is a decorative or memorial item from a cemetery, graveyard, or a person's grave site.
- (c)
  - (1) Upon the proclamation of a state of emergency by the President of the United States or the Governor or upon the declaration of a local emergency by the executive officer of any city or county and for a period of thirty (30) days following that declaration, the penalty for theft of property is enhanced if the property is:
    - (A) A generator intended for use by:
      - (i) A public facility;
      - (ii) A nursing home or hospital;
      - (iii) An airport;
      - (iv) A public safety device;
      - (v) A communication tower or facility;
      - (vi) A public utility;
      - (vii) A water system or sewer system;
      - (viii) A public safety agency; or
      - (ix) Any other facility or use providing a vital service; or
    - (B) Any other equipment used in the transmission of electric power or telephone service.
  - (2) As used in this subsection:
    - (A) "Public safety agency" means an agency of the State of Arkansas or a functional division of a political subdivision that provides:
      - (i) Firefighting and rescue;
      - (ii) Natural or human-caused disaster or major emergency response;
      - (iii) Law enforcement; or
      - (iv) Ambulance or emergency medical services; and
    - (B) "Public safety device" includes, but is not limited to, a traffic signaling device or a railroad crossing device.
  - (3) The penalty is enhanced as follows:
    - (A)

- (i) The fine for the offense shall be at least five thousand dollars (\$5,000) and not more than fifty thousand dollars (\$50,000).
- (ii) The fine is mandatory; and
- (B) The offense is a Class D felony if it would have been a Class A misdemeanor.

## History

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Acts 1975, No. 280, § 2203; 1977, No. 360, § 8; 1979, No. 592, § 1; 1983, No. 719, § 1; A.S.A. 1947, § 41-2203; Acts 1987, No. 934, § 3; 1991, No. 712, § 1; 1995, No. 277, § 1; 1997, No. 516, § 1; 2001, No. 157, § 1; 2001, No. 1195, § 1; 2003, No. 838, § 1; 2005, No. 1442, § 1; 2007, No. 693, § 1; 2007, No. 827, § 39; 2009, No. 1295, § 2; 2011, No. 570, § 23; 2011, No. 1120, § 8; 2011, No. 1227, § 1; 2013, No. 1125, § 7; 2019, No. 311, § 1; 2019, No. 503, § 1; 2019, No. 611, § 2; 2021, No. 340, § 2.

# A.C.A. § 5-36-106

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 36 Theft](#)
- [Subchapter 1 — General Provisions](#)

### 5-36-106. Theft by receiving.

- 
- (a) A person commits the offense of theft by receiving if he or she receives, retains, or disposes of stolen property of another person:
- (1) Knowing that the property was stolen; or
  - (2) Having good reason to believe the property was stolen.
- (b) As used in this section, "receiving" means acquiring possession, control, or title or lending on the security of the property.
- (c) The following give rise to a presumption that a person knows or believes that property was stolen:
- (1) The unexplained possession or control by the person of recently stolen property; or
  - (2) The acquisition by the person of property for a consideration known to be far below the property's reasonable value.
- (d) It is a defense to a prosecution for the offense of theft by receiving that the property is received, retained, or disposed of with the purpose of restoring the property to the owner or another person entitled to the property.
- (e) Theft by receiving is a:
- (1) Class B felony if the value of the property is twenty-five thousand dollars (\$25,000) or more;
  - (2) Class C felony if:
    - (A) The value of the property is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000); or
    - (B) The property is a firearm valued at two thousand five hundred dollars (\$2,500) or more;
  - (3) Class D felony if:
    - (A) The value of the property is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000);
    - (B) The property is a:
      - (i) Credit card or credit card account number;
      - (ii) Debit card or debit card account number; or
      - (iii) Firearm valued at less than two thousand five hundred dollars (\$2,500); or
  - (4) Class A misdemeanor if otherwise committed.
- (f) A person convicted of a felony offense under this section is subject to an enhanced sentence of an additional term of imprisonment of five (5) years at the discretion of the court if the finder of fact finds that the stolen property was nonferrous metal, as it is defined in § 17-44-101.

### History

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Acts 1975, No. 280, § 2206; 1977, No. 360, § 10; 1983, No. 719, § 3; A.S.A. 1947, § 41-2206; Acts 1997, No. 303, § 1; 1997, No. 516, § 3; 2003, No. 838, § 3; 2011, No. 570, § 25; 2013, No. 548, § 1; 2013, No. 1354, § 1.

# A.C.A. § 5-36-115

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 36 Theft](#)
- [Subchapter 1 — General Provisions](#)

### 5-36-115. Theft of leased, rented, or entrusted personal property — False report of wealth or credit.

- 
- (a) A person is guilty of theft of leased, rented, or entrusted property if the person:
- (1) Purposely, with a purpose to defraud, or by false pretense takes, carries, leads, drives away, destroys, sells, secretes, converts, or appropriates in any wrongful manner any personal property of another person that is leased, rented, or entrusted to the actor; or
  - (2) Falsely reports of his or her wealth or mercantile credit and by the false report fraudulently obtains possession of personal property or the labor or service of another person.
- (b) The amount involved in the theft of leased, rented, or entrusted property is deemed to be the highest value by any reasonable standard of the personal property, service, or labor.
- (c) It is prima facie evidence of purpose to commit theft of leased or rented property if a person who has leased or rented the personal property of another person:
- (1) Fails to return or make an arrangement acceptable with the lessor to return the personal property to the owner within five (5) days, excluding Saturday, Sunday, or a state or federal holiday, after proper notice following the expiration of the lease or rental agreement; or
  - (2) Presents identification to the lessor or renter of the personal property that is false, fictitious, or not current with respect to name, address, place of employment, or other appropriate item.
- (d) Proper notice by the lessor or renter of the personal property shall consist of a written demand addressed and mailed by certified or registered mail to the lessee or rentee at the address given at the time of making the lease or rental agreement.
- (e) The following factors constitute an affirmative defense to prosecution for theft of leased or rented property:
- (1) That the lessee or rentee accurately stated his or her name and address at the time of lease or rental;
  - (2) That the lessee's or rentee's failure to return the personal property at the expiration date of the lease or rental agreement was lawful;
  - (3) That the lessee or rentee failed to receive the lessor's or renter's notice personally unless notice was waived; and
  - (4) That the lessee or rentee returned the personal property to the lessor, renter, or owner within forty-eight (48) hours of the commencement of prosecution, together with any charges for the overdue period and the value of damages to the personal property, if any.
- (f)
- (1) For any lease or rental contract of twenty-five dollars (\$25.00) or more, the lessee may waive the notice required in subsection (c) of this section by signing a statement contained in the lease agreement or rental agreement. The waiver shall require a separate signature of the lessee.
  - (2) The form of the waiver shall be substantially as follows: [Click here to view form.](#)
- (g) A violation of this section is a:
- (1) Class B felony if:
    - (A) The value of the property, service, or labor is twenty-five thousand dollars (\$25,000) or more;
    - (B) The property, service, or labor is obtained by the threat of serious physical injury to any person or destruction of the occupiable structure of another person; or

(C) The property, service, or labor is obtained by threat and the actor stands in a confidential or fiduciary relationship to the person threatened;

(2) Class C felony if:

(A) The value of the property, service, or labor is less than twenty-five thousand dollars (\$25,000) but more than five thousand dollars (\$5,000);

(B) The property, service, or labor is obtained by threat;

(C) The property is a firearm valued at two thousand five hundred dollars (\$2,500) or more; or

(D) The value of the property, service, or labor is five hundred dollars (\$500) or more and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;

(3) Class D felony if:

(A) The value of the property, service, or labor is five thousand dollars (\$5,000) or less but more than one thousand dollars (\$1,000);

(B) The property is a firearm valued at less than two thousand five hundred dollars (\$2,500);

(C) The value of the property, service, or labor is at least one hundred dollars (\$100) or more but less than five hundred dollars (\$500) and the theft occurred in an area declared to be under a state of emergency pursuant to proclamation by the President of the United States, the Governor, or the executive officer of a city or county;

(D) The property is livestock and the value of the livestock is in excess of two hundred dollars (\$200); or

(E) The property is an electric power line, gas line, water line, wire or fiber insulator, electric motor, or other similar apparatus connected to a farm shop, on-farm grain drying and storage complex, heating and cooling system, environmental control system, animal production facility, irrigation system, or dwelling; or

(4) Class A misdemeanor if:

(A) The value of the property, service, or labor is one thousand dollars (\$1,000) or less; or

(B) The property has inherent, subjective, or idiosyncratic value to its owner or possessor even if the property has no market value or replacement cost.

## History

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Acts 1977, No. 387, § 1; 1985, No. 883, § 1; A.S.A. 1947, § 41-2209; Acts 1989, No. 720, § 1; 2015, No. 1263, §§ 4, 5.



# A.C.A. § 5-38-310

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 38 Damage or Destruction of Property](#)
- [Subchapter 3 — Arson and Other Burning](#)

### 5-38-310. Unlawful burning.

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(a) A person commits the offense of unlawful burning if the person:

- (1) Sets on fire or causes or procures to be set on fire any forest, brush, or other inflammable vegetation on another person's land;
- (2) Allows a fire that he or she built or has charge of to escape from his or her control or to spread to a person's land other than that of the builder of the fire;
- (3)
  - (A) Burns any brush, stumps, logs, rubbish, fallen timber, grass, stubble, or debris of any sort, whether on the person's own land or another person's land, without taking necessary precaution both before lighting the fire and at any time after lighting the fire to prevent the escape of the fire.
  - (B) The escape of fire to adjoining timber, brush, or grassland is prima facie evidence that a necessary precaution was not taken;
- (4) Builds a camp fire on another person's land without clearing the ground immediately around it of material that will carry fire;
- (5) Leaves on another person's land a camp fire to spread on that person's land;
- (6) Starts a fire in forest material not the person's own by throwing away a lighted cigar, match, or cigarette or by the use of a firearm or in any other manner and leaves the fire unextinguished;
- (7) Defaces or destroys a fire warning notice;
- (8) Is an employee of the Arkansas Forestry Commission or an officer charged with a duty of enforcing a criminal law and fails to attempt to secure the arrest and conviction of a person against whom he or she has evidence or can secure evidence of violating a fire law; or
- (9) Sets on fire or causes or procures to be set on fire any forest, brush, or other flammable material in violation of a burn ban on outdoor burning declared under § 12-75-108.

(b) Unlawful burning is a Class A misdemeanor.

(c) A bond for costs shall not be required in a court of this state for prosecution for violation of this section.

(d) It is not a violation of:

(1) Subdivision (a)(8) of this section for an employee of the commission to fail to enforce subdivision (a)(9) of this section; or

(2) Subdivision (a)(9) of this section if the person was:

(A) Acting under a permit issued by the chief executive of the political subdivision issuing the burn ban; or

(B)

(i) Setting on fire or causing or procuring to be set on fire any crop remainder or remaining vegetation after harvest of the crop on the person's land.

(ii)

(a) In order to provide a safety barrier between the crop remainder or remaining vegetation and adjacent land, the person shall perform adequate disking of field perimeters or perform other safety measures as required by the county burn ban officer.

(b) If the person does not comply with subdivision (d)(2)(B)(ii)(a) of this section, the defense under subdivision (d)(2)(B)(i) is not available, and the person is liable for actual damages to adjacent land caused by the fire.

## History

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Acts 1935, No. 85, §§ 1, 8; Pope's Dig., §§ 3049, 3056; Acts 1981, No. 845, §§ 1, 2; A.S.A. 1947, §§ 41-1951, 41-1958; Acts 1993, No. 521, § 4; 2005, No. 1994, § 349; 2007, No. 465, § 1; 2009, No. 748, § 23; 2011, No. 1038, § 1.

# A.C.A. § 5-39-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 39 Burglary, Trespass, and Other Intrusions](#)
- [Subchapter 1 — General Provisions](#)

### 5-39-101. Definitions.

As used in this chapter:

(1) "Artifact" means an object produced or shaped by human craft, such as a tool, weapon, coin, or ornament of archaeological, cultural, or historical interest or significance;

(2) "Commercial occupiable structure" means a vehicle, building, or other structure in which:

(A) Any person carries on a business or other calling; or

(B) People assemble for a purpose of business, government, education, religion, entertainment, or public transportation;

(3) "Critical infrastructure" means the same as defined in § 5-38-101;

(4)

(A) "Enter or remain unlawfully" means to enter or remain in or upon premises when not licensed or privileged to enter or remain in or upon the premises.

(B)

(i) A person who enters or remains in or upon premises that are at the time open to the public does so with license and privilege, regardless of his or her purpose, unless he or she defies a lawful order not to enter or remain on the premises personally communicated to the person by the owner of the premises or another person authorized by the owner.

(ii) A license or privilege to enter or remain in or upon premises only part of which are open to the public is not a license or privilege to enter or remain in a part of the premises not open to the public.

(C) A person who enters or remains upon unimproved and apparently unused land not fenced or otherwise enclosed in a manner designed to exclude an intruder does so with license and privilege unless:

(i) Notice not to enter or remain is personally communicated to the person by the owner or a person authorized by the owner; or

(ii) Notice is given by posting in a conspicuous manner;

(5) "Harvesting device" means a device or object used to collect or accumulate, or to assist in the collection or accumulation of, an agricultural resource or a natural resource in bulk;

(6) "Killing device" means a firearm, bladed weapon, or other object, when not used in the course of lawful hunting or fishing of wildlife;

(7) "Natural resource" means materials or substances such as minerals, timber, water, plants, and fertile land that occur in nature and can be used for economic gain;

(8) "Premises" means an occupiable structure and any real property;

(9)

(A) "Residential occupiable structure" means a vehicle, building, or other structure:

(i) In which any person lives; or

(ii) That is customarily used for overnight accommodation of a person whether or not a person is actually present.

(B) "Residential occupiable structure" includes each unit of a residential occupiable structure divided into a separately occupied unit; and

(10) "Vehicle" means any craft or device designed for the transportation of a person or property across land or water or through the air.

## History

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Acts 1975, No. 280, § 2001; A.S.A. 1947, § 41-2001; Acts 1993, No. 442, § 1; 1993, No. 552, § 1; 2017, No. 877, § 2; 2021, No. 712, § 3.

# A.C.A. § 5-39-203

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 39 Burglary, Trespass, and Other Intrusions](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-39-203. Criminal trespass.

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- (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

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

# A.C.A. § 5-39-204

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 39 Burglary, Trespass, and Other Intrusions](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-39-204. Aggravated residential burglary. [Effective until January 1, 2024.]

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- (a) A person commits aggravated residential burglary if he or she commits residential burglary as defined in § 5-39-201 of a residential occupiable structure occupied by any person, and he or she:
- (1) Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon; or
  - (2) Inflicts or attempts to inflict death or serious physical injury upon another person.
- (b) Aggravated residential burglary is a Class Y felony.

## History

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Acts 2007, No. 1608, § 1.

# A.C.A. § 5-39-210

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 39 Burglary, Trespass, and Other Intrusions](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-39-210. Forcible possession of land.

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Any person who takes or keeps possession of any real estate by actual force or violence without the authority of law, or who, being armed with a deadly or dangerous weapon, by violence to any person entitled to the possession, or by putting in fear of immediate danger to his or her person obtains or keeps possession of any real estate or property without legal authority upon conviction is adjudged guilty of a Class A misdemeanor.

### History

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Rev. Stat., ch. 44, div. 8, art. 1, § 6; C. & M. Dig., § 2779; Pope's Dig., § 3483; A.S.A. 1947, § 41-2051; Acts 2005, No. 1994, § 220.



# A.C.A. § 5-39-305

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 4. Offenses Against Property](#)
- [Chapter 39 Burglary, Trespass, and Other Intrusions](#)
- [Subchapter 3 — Offenses Involving Posted and Enclosed Land](#)

### 5-39-305. Criminal trespass on premises located in unincorporated area.

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- (a)
- (1) A person shall not purposely enter without written permission of the owner or lessee upon another person's premises located outside the boundary of any city or town if those premises are:
- (A) Lawfully posted;
  - (B) Crop land or timber land;
  - (C) Enclosed with a fence sufficient under § 2-39-101 et seq.; or
  - (D) Critical infrastructure.
- (2) The posting of premises is not a requirement under this section.
- (b) Criminal trespass on premises located in an unincorporated area 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 § 5-39-203; or
  - (B) The premises is critical infrastructure;
- (2) Class A misdemeanor if:
- (A) At the time of the criminal trespass on premises located in an unincorporated area, 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 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) Violation with a fine not to exceed one hundred dollars (\$100) if otherwise committed.
- (c) It is an affirmative defense to a prosecution 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:
- (1) Public land;
  - (2) A law enforcement officer or game warden acting in the line of duty; or

- (3) The following persons who are acting in the line of duty or within the scope of their employment:
- (A) A law enforcement officer;
  - (B) A firefighter;
  - (C) An emergency first responder;
  - (D) 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
  - (E) 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) This section does not repeal any law concerning posting of land or trespass.

## History

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Acts 1995, No. 870, §§ 1, 2; 1999, No. 1029, § 4; 2017, No. 877, § 4; 2021, No. 712, § 5; 2023, No. 852, § 1.

# A.C.A. § 5-54-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-101. Definitions.

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As used in this subchapter:

- (1) "Arkansas State Hospital" includes any subdivision or facility of the Arkansas State Hospital and any other hospital established by law or legally designated for similar purposes;
- (2)
  - (A) "Correctional facility" means any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order.
  - (B) "Correctional facility" does not include youth services programs and applies to the Arkansas State Hospital only as to persons detained there charged with or convicted of an offense;
- (3)
  - (A) "Custody" means actual or constructive restraint by a law enforcement officer pursuant to an arrest or a court order.
  - (B) "Custody" does not include detention in a correctional facility, youth services program, or the Arkansas State Hospital;
- (4) "Deadly physical force" means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury;
- (5) "Escape" means the unauthorized departure of a person from custody or a correctional facility;
- (6) "Governmental function" means any activity that a public servant is legally authorized to undertake on behalf of any governmental unit he or she serves;
- (7) "Implement for escape" means any weapon, tool, or other thing that may be useful for escape;
- (8) "Implement for unauthorized departure" means any weapon, tool, or other thing that may be useful for unauthorized departure;
- (9) "Juvenile detention facility" means any facility for the temporary care of juveniles alleged to be delinquent, or adjudicated delinquent and awaiting disposition, who require secure custody in a physically restricting facility designed and operated with all entrances and exits under the exclusive control of the facility's staff, so that a juvenile may not leave the facility unsupervised or without permission;
- (10) "Physical force" means any bodily impact, restraint, or confinement or the threat of bodily impact, restraint, or confinement;
- (11) "Prohibited article" means:
  - (A) An intoxicating beverage other than sacramental wine labeled as sacramental wine and supplied by a religious official who supplies the sacramental wine to an inmate in the Division of Correction or Division of Community Correction for the sole purpose of an approved religious service, pursuant to rules promulgated by the Board of Corrections;
  - (B) A controlled substance, as defined by §§ 5-64-101 et seq. — 5-64-601 et seq., not prescribed by a physician for the benefit of the person to whom it is delivered;
  - (C) A weapon, including a firearm or anything manifestly designed, made, adapted, or capable of being adapted to inflict physical injury, and anything that in the manner of its use or intended use is capable of causing physical injury; or

(D) Anything furnished an inmate in a correctional facility, the Arkansas State Hospital, or juvenile training school without authorization of a person charged with the duty of maintaining the safety or security of the institution or any person confined in the institution;

(12) "Public record" includes all official books, papers, exhibits, or records of any type required by law to be created by or received and retained in any governmental office or agency, affording notice or information to the public or constituting a memorial of an act or transaction of a public office or public servant; and

(13)

(A) "Youth services program" means a residential program operated by the Division of Youth Services of the Department of Human Services or its contractor for the purpose of detaining, housing, and treating persons committed to the Division of Youth Services.

(B) A person committed to the Division of Youth Services and placed in a youth services program is in the custody of the youth services program while attending or participating in any activity conducted or arranged by the youth services program, regardless of the physical location of the activity.

## History

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Acts 1975, No. 280, § 2801; 1977, No. 360, § 13; A.S.A. 1947, § 41-2801; Acts 1988 (4th Ex. Sess.), No. 8, § 1; 1988 (4th Ex. Sess.), No. 23, § 1; 1997, No. 1229, §§ 1, 2; 1997, No. 1299, §§ 1, 2; 2005, No. 1994, § 253; 2019, No. 315, § 150; 2019, No. 910, § 675.

# A.C.A. § 5-54-105

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-105. Hindering apprehension or prosecution.

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- (a) A person commits an offense under this section if, with purpose to hinder the apprehension, prosecution, conviction, or punishment of another person for an offense, he or she:
- (1) Harbors or conceals the other person;
  - (2) Provides or aids in providing the other person with a weapon, money, transportation, disguise, or other means of avoiding apprehension, discovery, or effecting escape;
  - (3) Prevents or obstructs anyone from performing an act which might aid in the discovery, apprehension, or identification of the other person by means of force or intimidation or the threat of force or intimidation, or by means of deception;
  - (4) Conceals, alters, destroys, or otherwise suppresses the discovery of any fact, information, or other thing related to the crime which might aid in the discovery, apprehension, or identification of the other person;
  - (5) Warns the other person of impending discovery, apprehension, or identification;
  - (6) Volunteers false information to a law enforcement officer; or
  - (7) Purposely lies or attempts to purposely provide erroneous information, documents, or other instrumentalities which he or she knows to be false to a certified law enforcement officer that would distract from the true course of the investigation or inhibit the logical or orderly progress of the investigation.
- (b)
- (1)
- (A) Hindering apprehension or prosecution is a Class B felony if the conduct of the person assisted in violation of this section constitutes a Class Y felony or a Class A felony.
- (B) However, except as provided in subdivision (b)(2) of this section, if the defendant shows by a preponderance of the evidence that he or she stands to the person assisted in the relation of parent, child, brother, sister, husband, or wife, hindering apprehension or prosecution is a Class D felony.
- (2) Subdivision (b)(1)(B) of this section does not apply if the offense of the person assisted is:
- (A) Capital murder, as prohibited in § 5-10-101;
  - (B) Murder in the first degree, as prohibited in § 5-10-102;
  - (C) Kidnapping, as prohibited in § 5-11-102; or
  - (D) Rape, as prohibited in § 5-14-103.
- (c) Hindering apprehension or prosecution is a felony classified one (1) degree below the felony constituted by the conduct of the person assisted in violation of this section if the conduct is a Class B felony or a Class C felony.
- (d)
- (1) Hindering apprehension or prosecution is a Class A misdemeanor if the conduct of the person assisted in violation of this section is a Class D felony or an unclassified felony.
- (2) Hindering apprehension or prosecution is a Class D felony if the person in violation of this section was assisting an escapee from correctional custody sentenced after being found guilty of a felony.
- (3) Otherwise, hindering apprehension or prosecution is a misdemeanor classed one (1) degree below the misdemeanor constituted by the conduct of the person assisted in violation of this section.

## History

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Acts 1975, No. 280, § 2805; 1977, No. 360, § 15; 1985, No. 698, § 1; 1985, No. 1049, § 1; A.S.A. 1947, § 41-2805; Acts 1997, No. 743, § 1; 2005, No. 1867, § 1.

# A.C.A. § 5-54-110

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-110. First degree escape.

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(a) A person commits the offense of first degree escape if:

(1) At any time, including from the point of departure from confinement to the return to confinement, aided by another person actually present, he or she uses or threatens to use physical force in escaping from:

(A) Custody;

(B) A correctional facility;

(C) A juvenile detention facility; or

(D) A youth services program; or

(2) At any time, including from the point of departure from confinement to the return to confinement, he or she uses or threatens to use a deadly weapon in escaping from:

(A) Custody;

(B) A correctional facility;

(C) A juvenile detention facility; or

(D) A youth services program.

(b)

(1) First degree escape is a Class A felony if, at the time of the escape, the person is in the custody of:

(A) The Division of Correction;

(B) The Division of Community Correction; or

(C) A law enforcement agency.

(2) Otherwise first degree escape is a Class C felony.

### History

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Acts 1975, No. 280, § 2810; A.S.A. 1947, § 41-2810; Acts 1997, No. 1229, § 3; 1997, No. 1299, § 3; 2003, No. 1348, § 1; 2005, No. 1994, § 254; 2009, No. 478, § 1; 2019, No. 910, § 676.

# A.C.A. § 5-54-116

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-116. Aiding an unauthorized departure.

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(a) A person commits the offense of aiding an unauthorized departure if, not being an inmate in a youth services program, a youth services facility, or the Arkansas State Hospital, he or she knowingly aids another person in making or attempting to make an unauthorized departure from a juvenile detention facility, a youth services program, or the Arkansas State Hospital.

(b)

(1) Aiding an unauthorized departure is a Class C felony if the person aiding an unauthorized departure uses physical force or uses or threatens to use a deadly weapon.

(2) Otherwise, aiding an unauthorized departure is a Class A misdemeanor.

### History

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Acts 1975, No. 280, § 2816; A.S.A. 1947, § 41-2816; Acts 1997, No. 1229, § 6; 1997, No. 1299, § 6; 2005, No. 1994, § 256.



# A.C.A. § 5-54-117

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-117. Assisting in or furnishing an implement for escape.

- 
- (a) A person commits the offense of assisting in or furnishing an implement for escape if, with the purpose of facilitating escape, he or she:
- (1) Introduces an implement for escape into a correctional facility;
  - (2) Provides an inmate in a correctional facility with an implement for escape;
  - (3) Provides a person in custody with an implement for escape;
  - (4) Provides transportation of any kind that is used in the commission or furtherance of an escape from a correctional facility;
  - (5) Furnishes food, clothing, finances, or other aid to a person who escaped from a correctional facility; or
  - (6) Provides shelter or housing to a person who escaped from a correctional facility.
- (b)
- (1) Assisting in or furnishing an implement for escape is a Class B felony if the implement for escape provided is a deadly weapon.
  - (2) Otherwise assisting in or furnishing an implement for escape is a Class C felony.

### History

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Acts 1975, No. 280, § 2817; A.S.A. 1947, § 41-2817; Acts 2009, No. 478, § 4; 2011, No. 1120, § 11.

# A.C.A. § 5-54-118

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-118. Furnishing implement for unauthorized departure.

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(a) A person commits the offense of furnishing an implement for unauthorized departure if, with the purpose of facilitating an unauthorized departure, he or she:

- (1) Introduces an implement for unauthorized departure into the Arkansas State Hospital or a youth services program; or
- (2) Provides a person detained in the Arkansas State Hospital or a youth services program with an implement for unauthorized departure.

(b)

(1) Furnishing an implement for unauthorized departure is a Class C felony if the implement furnished is a deadly weapon.

(2) Otherwise, furnishing an implement for unauthorized departure is a Class A misdemeanor.

## History

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Acts 1975, No. 280, § 2818; A.S.A. 1947, § 41-2818; Acts 2005, No. 1994, § 257.

# A.C.A. § 5-54-119

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-119. Furnishing, possessing, or using prohibited articles — Delivering a prohibited article. [Effective until January 1, 2024.]

---

(a) A person commits the offense of furnishing a prohibited article if he or she knowingly:

- (1) Introduces a prohibited article into a correctional facility, the Arkansas State Hospital, or a youth services program; or
- (2) Provides a person confined in a correctional facility, the Arkansas State Hospital, or a youth services program with a prohibited article.

(b)

(1)

(A) Furnishing or providing a weapon, intoxicating beverage, controlled substance, moneys, a cellular telephone or other communication device, the components of a cellular telephone or other communication device, or any other items that would facilitate an escape, engaging in a continuing criminal enterprise, § 5-64-405, or violence within a facility is a Class B felony.

(B) Otherwise, furnishing a prohibited article is a Class C felony.

(2) This section does not apply to a religious official who supplies sacramental wine labeled as sacramental wine to an inmate in the Division of Correction for the sole purpose of an approved religious service, pursuant to rules promulgated by the Board of Corrections.

(c)

(1) A person commits possessing a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly possesses a:

(A) Cellular telephone or other communication device;

(B) Component of a cellular telephone or other communication device; or

(C) Controlled substance.

(2) Possessing a prohibited article is a Class B felony.

(d)

(1) A person commits using a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly uses a cellular telephone or other communication device to commit or to attempt, conspire, or solicit to commit:

(A) An escape from the custody of the correctional facility;

(B) Engaging in a continuing criminal enterprise, § 5-64-405; or

(C) A violent felony as defined at § 5-4-501(d)(2).

(2) Using a prohibited article is a Class A felony.

(e)

(1) A person commits the offense of delivering a prohibited article if, being an inmate of a correctional facility or in the custody of a correctional facility, the person knowingly delivers a controlled substance to another person.

(2)

(A) Delivering a prohibited article is a Class A felony if the controlled substance through its use causes the death of or serious bodily injury to another person.

(B) Otherwise, delivering a prohibited article is a Class B felony.

(f) A person may not be convicted of furnishing, possessing, or delivering a prohibited article if the prohibited article is a controlled substance and the person has been charged with, tried for, or convicted of a possession or delivery offense under § 5-64-401 et seq., that arises out of the same set of facts.

## History

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Acts 1975, No. 280, § 2819; 1977, No. 360, § 17; 1985, No. 686, § 1; A.S.A. 1947, § 41-2819; Acts 1988 (4th Ex. Sess.), No. 8, § 2; 1988 (4th Ex. Sess.), No. 23, § 2; 2005, No. 168, § 1; 2005, No. 1994, § 258; 2009, No. 479, § 1; 2013, No. 129, § 1; 2019, No. 315, § 151; 2019, No. 672, § 1.

# A.C.A. § 5-54-134

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 1 — General Provisions](#)

### 5-54-134. Disarming an officer.

- 
- (a) As used in this section, "taser stun gun" means the same as defined in § 5-73-133.
- (b) A person commits disarming an officer if, with the purpose of causing physical injury to the law enforcement officer or another person, the person purposely uses physical force to take from a law enforcement officer, the law enforcement officer's:
- (1) Firearm;
  - (2) Nightstick;
  - (3) Taser stun gun;
  - (4) Personal protection chemical dispensing device; or
  - (5) Any other protective gear or weapon carried by the law enforcement officer that could be used to cause physical injury to another person.
- (c) Disarming an officer is a Class C felony.

### History

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Acts 2023, No. 585, § 1.

# A.C.A. § 5-54-201

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 5. Offenses Against the Administration of Government](#)
- [Chapter 54 Obstructing Governmental Operations](#)
- [Subchapter 2 — Terrorism](#)

### 5-54-201. Definitions.

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As used in this subchapter:

(1) "Act of terrorism" means:

(A) Any act that causes or creates a risk of death or serious physical injury to five (5) or more persons;

(B) Any act that disables or destroys the usefulness or operation of any communications system;

(C) Any act or any series of two (2) or more acts committed in furtherance of a single intention, scheme, or design that disables or destroys the usefulness or operation of a computer network, computers, computer programs, or data used by:

(i) Any industry;

(ii) Any class of business;

(iii) Five (5) or more businesses;

(iv) The United States Government;

(v) State government;

(vi) Any unit of local government;

(vii) A public utility;

(viii) A manufacturer of pharmaceuticals;

(ix) A national defense contractor; or

(x) A manufacturer of chemical or biological products used in connection with agricultural production;

(D) Any act that disables or causes substantial damage to or destruction of any structure or facility used in or in connection with:

(i) Ground, air, or water transportation;

(ii) The production or distribution of electricity, gas, oil, or other fuel;

(iii) The treatment of sewage or the treatment or distribution of water; or

(iv) Controlling the flow of any body of water;

(E) Any act that causes substantial damage to or destruction of livestock or crops or a series of two (2) or more acts committed in furtherance of a single intention, scheme, or design which, in the aggregate, causes substantial damage to or destruction of livestock or crops;

(F) Any act that causes substantial damage to or destruction of:

(i) Any hospital; or

(ii) Any building, facility, or monument used, owned, or maintained by:

(a) The United States Government;

(b) State government;

(c) Any unit of local government;

(d) A national defense contractor;

(e) A public utility; or

(f) A manufacturer of chemical or biological products used in or in connection with agricultural production or the storage or processing of agricultural products or the preparation of agricultural products for food or food products intended for resale or for feed for livestock; or

(G) Any act that causes damage of five hundred thousand dollars (\$500,000) or more to any building or set of buildings;

- (2) "Agricultural production" means the breeding and growing of livestock and crops;
- (3) "Agricultural products" means crops and livestock;
- (4) "Biological products used in agriculture" means, but is not limited to, seeds, plants, and deoxyribonucleic acid (DNA) of plants or animals altered for use in crop or livestock breeding or production or which are sold, intended, designed, or produced for use in crop production;
- (5) "Communications system" means any works, property, or material of any radio, telegraph, telephone, microwave, cable station, or system;
- (6)
  - (A) "Computer" means a device that accepts, processes, stores, retrieves, or outputs data.
  - (B) "Computer" includes, but is not limited to, auxiliary storage and telecommunications devices;
- (7) "Computer network" means a set of related, remotely connected devices and any communications facilities including more than one (1) computer with the capability to transmit data among them through communication facilities;
- (8) "Computer program" means a series of coded instructions or statements in a form acceptable to a computer that causes the computer to process data and supply the results of data processing;
- (9)
  - (A) "Data" means representations of information, knowledge, facts, concepts, or instructions, including program documentation, which are prepared in a formalized manner and are stored or processed in or transmitted by a computer.
  - (B) Data may be stored in any form including, but not limited to, magnetic or optical storage media, punch cards, or data stored internally in the memory of a computer;
- (10) "Explosive or incendiary device" means the same as defined in § 5-71-301;
- (11) "Hoax bomb" means a device designed to look like an explosive or incendiary device;
- (12) "Hoax substance" means any substance that would cause a reasonable person to believe that the substance is a:
  - (A) Dangerous chemical or biological agent;
  - (B) Poison;
  - (C) Harmful radioactive substance; or
  - (D) Similar substance;
- (13) "Livestock" means animals bred or raised for human consumption;
- (14) "Material support or resources" means:
  - (A) Currency or other financial securities;
  - (B) Financial services;
  - (C) Lodging;
  - (D) Training;
  - (E) Safe house;
  - (F) False documentation or identification;
  - (G) Communications equipment;
  - (H) Facilities;
  - (I) Weapons;
  - (J) Lethal substances;
  - (K) Explosives;
  - (L) Personnel;
  - (M) Transportation;
  - (N) Expert services or expert assistance; and
  - (O) Any other kind of physical assets or intangible property;
- (15)
  - (A) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
  - (B) "Person" includes, without limitation, any:
    - (i) Charitable organization, whether incorporated or unincorporated;
    - (ii) Professional fund raiser, professional solicitor, limited liability company, association, joint stock company, trust, trustee, or any group of people formally or informally affiliated or associated for a common purpose; and
    - (iii) Officer, director, partner, member, or agent of any person;
- (16) "Render criminal assistance" means to do any of the following with the purpose of preventing, hindering, or delaying the discovery or apprehension of a person whom he or she knows or believes has committed an offense under this subchapter or is being sought by law enforcement officials for the

commission of an offense under this subchapter, or with the purpose to assist a person in profiting or benefiting from the commission of an offense under this subchapter:

(A) Harbor or conceal the person;

(B) Warn the person of impending discovery or apprehension;

(C) Provide the person with:

(i) Money;

(ii) Transportation;

(iii) A weapon;

(iv) A disguise;

(v) False identification documents; or

(vi) Any other means of avoiding discovery or apprehension;

(D) Prevent or obstruct, by means of force, intimidation, or deception, anyone from performing an act that might aid in the discovery or apprehension of the person;

(E) Suppress, by any act of concealment, alteration, or destruction, any physical evidence that might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person;

(F) Aid the person to protect or expeditiously profit from an advantage derived from the crime; or

(G)

(i) Provide expert services or expert assistance to the person.

(ii) Providing expert services or expert assistance shall not be construed to apply to:

(a) A licensed attorney who discusses with a client the legal consequences of a proposed course of conduct or advises a client of legal or constitutional rights; or

(b) A licensed medical worker who provides emergency medical treatment to a person whom the licensed medical worker believes committed an offense under this subchapter if, as soon as reasonably practicable either before or after providing the medical treatment, the licensed medical worker notifies a law enforcement agency; and

(17) "Terrorist" means any person who engages in or is about to engage in a terrorist act with the purpose to intimidate or coerce a significant portion of the civilian population or influence the policy of a government or a unit of government.

## History

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Acts 2003, No. 1342, § 3; 2007, No. 827, §§ 47, 48; 2021, No. 351, § 1; 2021, No. 1014, § 6.



# A.C.A. § 5-64-420

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties](#)

5-64-420. Possession of methamphetamine, heroin, or cocaine with the purpose to deliver.

---

(a) Except as provided by this chapter, it is unlawful if a person possesses methamphetamine, heroin, or cocaine with the purpose to deliver the methamphetamine, heroin, or cocaine. Purpose to deliver may be shown by any of the following factors:

- (1) The person possesses the means to weigh, separate, or package methamphetamine, heroin, or cocaine;
- (2) The person possesses a record indicating a drug-related transaction;
- (3) The methamphetamine, heroin, or cocaine is separated and packaged in a manner to facilitate delivery;
- (4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of methamphetamine, heroin, or cocaine;
- (5) The person possesses at least two (2) other controlled substances in any amount; or
- (6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver methamphetamine, heroin, or cocaine.

(b) A person who violates this section upon conviction is guilty of a:

- (1) Class C felony if the person possessed less than two grams (2g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent;
- (2) Class B felony if the person possessed two grams (2g) or more but less than ten grams (10g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent; or
- (3) Class A felony if the person possessed ten grams (10g) or more but less than two hundred grams (200g) of methamphetamine, heroin, or cocaine by aggregate weight, including an adulterant or diluent.

## History

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Acts 2011, No. 570, § 45; 2021, No. 887, § 3.

# A.C.A. § 5-64-421

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties](#)

5-64-421. Possession of fentanyl — Possession of fentanyl with the purpose to deliver — Delivery of fentanyl — Manufacture of fentanyl — Predatory marketing of fentanyl to minors.

- 
- (a)
- (1) Except as provided by this chapter, it is unlawful for a person to possess fentanyl.
- (2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a Class C felony.
- (b)
- (1) Except as provided by this chapter, it is unlawful for a person to possess fentanyl with the purpose to deliver fentanyl.
- (2) Purpose to deliver may be shown by any of the following factors:
- (A) The person possesses the means to weigh, separate, or package fentanyl;
- (B) The person possesses a record indicating a drug-related transaction;
- (C) The fentanyl is separated or packaged in a manner to facilitate delivery;
- (D) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of fentanyl;
- (E) The person possesses at least two (2) other controlled substances in any amount; or
- (F) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver fentanyl.
- (3) A person who violates subdivision (b)(1) of this section upon conviction is guilty of a Class A felony.
- (c)
- (1) Except as provided by this chapter, it is unlawful for a person to deliver fentanyl.
- (2) A person who violates subdivision (c)(1) of this section upon conviction is guilty of a Class Y felony.
- (d)
- (1) Except as provided by this chapter, it is unlawful for a person to manufacture fentanyl.
- (2) A person who manufactures fentanyl upon conviction is guilty of a Class Y felony.
- (e) It is an affirmative defense to prosecution under subsection (a) of this section if a person has a valid prescription for fentanyl and is using the fentanyl lawfully.
- (f) It is not a violation under subsections (b) and (c) of this section if a permitted manufacturer, wholesaler, pharmacy, hospital, long-term care facility, or other medical provider delivers, prescribes, administers, or transfers fentanyl for lawful purposes and in compliance with state and federal law.
- (g) It is not a violation of subsection (d) of this section for a pharmaceutical company to manufacture fentanyl in compliance with state and federal law.
- (h) The unlawful possession of drug paraphernalia containing fentanyl residue shall not be charged under this section and may be charged under § 5-64-443.
- (i)
- (1)
- (A) A person commits the offense of predatory marketing of fentanyl to minors if he or she possesses fentanyl with the purpose to deliver, delivers fentanyl, or manufactures fentanyl; and
- (B) The fentanyl possessed, delivered, or manufactured is likely to appeal to minors due to the shape, color, taste, or design of the fentanyl or the fentanyl's packaging, including without limitation:

- (i) Products that are modeled after noncontrolled substance products primarily consumed by and marketed to minors;
  - (ii) Products in the shape of an animal, a vehicle, a person, or a character; or
  - (iii) Products that resemble food or beverages that are attractive to minors and that are commonly sold in retail establishments regardless of whether the food or beverages are generic, trademarked, or branded products, including without limitation products that resemble candy.
- (2) A person who commits predatory marketing of fentanyl to minors upon conviction is guilty of an unclassified felony and shall be sentenced to a term of life imprisonment and a fine of one million dollars (\$1,000,000).

## History

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Acts 2021, No. 887, § 4; 2023, No. 584, § 4.

# A.C.A. § 5-64-424

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties](#)

5-64-424. Possession of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver.

---

(a) Except as provided in this chapter, it is unlawful if a person possesses a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine with the purpose to deliver the Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine. Purpose to deliver may be shown by any of the following factors:

- (1) The person possesses the means to weigh, separate, or package a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;
- (2) The person possesses a record indicating a drug-related transaction;
- (3) The Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine is separated and packaged in a manner to facilitate delivery;
- (4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;
- (5) The person possesses at least two (2) other controlled substances in any amount; or
- (6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine.

(b) A person who violates this section upon conviction is guilty of a:

- (1) Class C felony if the person possessed by aggregate weight, including an adulterant or diluent, less than two grams (2g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine;
- (2) Class B felony if the person possessed by aggregate weight, including an adulterant or diluent:
  - (A) Two grams (2g) or more but less than twenty-eight grams (28g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (b)(2);
  - (B) Eighty (80) or more but less than one hundred sixty (160) dosage units of hydromorphone hydrochloride;
  - (C) Eighty (80) or more but less than one hundred sixty (160) dosage units of lysergic acid diethylamide (LSD);
  - (D) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or
  - (E) Eighty (80) or more but less than one hundred sixty (160) dosage units but not more than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug; or
- (3) Class A felony if the person possessed by aggregate weight, including an adulterant or diluent:
  - (A) Twenty-eight grams (28g) or more but less than two hundred grams (200g) of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, cocaine, or a controlled substance listed in this subdivision (b)(3);
  - (B) One hundred twenty-eight milligrams (128mg) or more or one hundred sixty (160) dosage units or more but less than two hundred grams (200g) of hydromorphone hydrochloride;

- (C) One thousand six hundred micrograms (1,600µ) or more or one hundred sixty (160) dosage units or more but less than two hundred grams (200g) of lysergic acid diethylamide (LSD);
  - (D) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II depressant or hallucinogenic drug; or
  - (E) One hundred sixty (160) dosage units or more regardless of weight but less than two hundred grams (200g) for any other Schedule I or Schedule II stimulant drug.
- (c) It is a defense to a prosecution under this section that the person possessed less than the minimum listed amount of a Schedule I or Schedule II controlled substance that is not methamphetamine, fentanyl, heroin, or cocaine and that is listed in this section.

## History

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Acts 2011, No. 570, § 48; 2021, No. 887, § 5.

# A.C.A. § 5-64-428

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties](#)

5-64-428. Possession of a Schedule III controlled substance with the purpose to deliver.

---

(a) Except as provided by this chapter, it is unlawful if a person possesses a Schedule III controlled substance with the purpose to deliver the Schedule III controlled substance. Purpose to deliver may be shown by any of the following factors:

- (1) The person possesses the means to weigh, separate, or package a Schedule III controlled substance;
- (2) The person possesses a record indicating a drug-related transaction;
- (3) The Schedule III controlled substance is separated and packaged in a manner to facilitate delivery;
- (4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule III controlled substance;
- (5) The person possesses at least two (2) other controlled substances in any amount; or
- (6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule III controlled substance.

(b) A person who violates this section upon conviction is guilty of a:

- (1) Class C felony if the person possessed by aggregate weight, including an adulterant or diluent:
    - (A) Less than twenty-eight grams (28g) of a Schedule III controlled substance that is not a controlled substance listed in this subdivision (b)(1);
    - (B) Less than eighty (80) dosage units for any other Schedule III depressant or hallucinogenic drug; or
    - (C) Less than eighty (80) dosage units for any other Schedule III stimulant drug;
  - (2) Class B felony if the person possessed by aggregate weight, including an adulterant or diluent:
    - (A) Twenty-eight grams (28g) or more but less than two hundred grams (200g) of a Schedule III controlled substance that is not a controlled substance listed in this subdivision (b)(2);
    - (B) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule III depressant or hallucinogenic drug; or
    - (C) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule III stimulant drug; or
  - (3) Class A felony if the person possessed by aggregate weight, including an adulterant or diluent:
    - (A) Two hundred grams (200g) or more but less than four hundred grams (400g) of a Schedule III controlled substance not a controlled substance listed in this subdivision (b)(3);
    - (B) One hundred sixty (160) dosage units or more for any other Schedule III depressant or hallucinogenic drug; or
    - (C) One hundred sixty (160) dosage units or more for any other Schedule III stimulant drug.
- (c) It is a defense to a prosecution under this section that the person possessed less than the minimum listed amount of a Schedule III controlled substance that is listed in this section.

## History

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Acts 2011, No. 570, § 51; 2013, No. 529, § 2.

# A.C.A. § 5-64-432

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties](#)

### 5-64-432. Possession of a Schedule IV or Schedule V controlled substance with the purpose to deliver.

(a) Except as provided by this chapter, it is unlawful if a person possesses a Schedule IV or Schedule V controlled substance with the purpose to deliver the Schedule IV or Schedule V controlled substance. Purpose to deliver may be shown by any of the following factors:

(1) The person possesses the means to weigh and separate a Schedule IV or Schedule V controlled substance;

(2) The person possesses a record indicating a drug-related transaction;

(3) The Schedule IV or Schedule V controlled substance is separated and packaged in a manner to facilitate delivery;

(4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule IV or Schedule V controlled substance;

(5) The person possesses at least two (2) other controlled substances in any amount; or

(6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule IV or Schedule V controlled substance.

(b) A person who violates this section upon conviction is guilty of a:

(1) Class D felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Less than two hundred grams (200g) of a Schedule IV or Schedule V controlled substance that is not a controlled substance listed in this subdivision (b)(1);

(B) Less than eighty (80) dosage units for any other Schedule IV or Schedule V depressant or hallucinogenic drug; or

(C) Less than eighty (80) dosage units for any other Schedule IV or Schedule V stimulant drug;

(2) Class C felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Two hundred grams (200g) or more but less than four hundred grams (400g) of a Schedule IV or Schedule V controlled substance that is not a controlled substance listed in this subdivision (b)(2);

(B) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule IV or Schedule V depressant or hallucinogenic drug; or

(C) Eighty (80) or more but less than one hundred sixty (160) dosage units for any other Schedule IV or Schedule V stimulant drug; or

(3) Class B felony if the person possessed by aggregate weight, including an adulterant or diluent:

(A) Four hundred grams (400g) or more but less than eight hundred grams (800g) of a Schedule IV or Schedule V controlled substance that is not a controlled substance listed in this subdivision (b)(3);

(B) One hundred sixty (160) dosage units or more but less than eight hundred grams (800g) for any other Schedule IV or Schedule V depressant or hallucinogenic drug; or

(C) One hundred sixty (160) dosage units or more but less than eight hundred grams (800g) for any other Schedule IV or Schedule V stimulant drug.

(c) It is a defense to a prosecution under this section that the person possessed less than the minimum listed amount of a Schedule IV or Schedule V controlled substance that is listed in this section.

**History** Acts 2011, No. 570, § 54; 2013, No. 529, § 3.

# A.C.A. § 5-64-436

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 4 — Uniform Controlled Substances Act — Prohibitions and Penalties](#)

5-64-436. Possession of a Schedule VI controlled substance with the purpose to deliver.

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(a) Except as provided by this chapter, it is unlawful if a person possesses a Schedule VI controlled substance with the purpose to deliver the Schedule VI controlled substance. Purpose to deliver may be shown by any of the following factors:

- (1) The person possesses the means to weigh and separate a Schedule VI controlled substance;
- (2) The person possesses a record indicating a drug-related transaction;
- (3) The Schedule VI controlled substance is separated and packaged in a manner to facilitate delivery;
- (4) The person possesses a firearm that is in the immediate physical control of the person at the time of the possession of the Schedule VI controlled substance;
- (5) The person possesses at least two (2) other controlled substances in any amount; or
- (6) Other relevant and admissible evidence that contributes to the proof that a person's purpose was to deliver a Schedule VI controlled substance.

(b) A person who violates this section upon conviction is guilty of a:

- (1) Class A misdemeanor if the person possessed by aggregate weight, including an adulterant or diluent, fourteen grams (14g) or less of a Schedule VI controlled substance;
- (2) Class D felony if the person possessed more than fourteen grams (14g) but less than four ounces (4 oz.) by aggregate weight, including an adulterant or diluent, of a Schedule VI controlled substance;
- (3) Class C felony if the person possessed four ounces (4 oz.) or more but less than twenty-five pounds (25 lbs.) by aggregate weight, including an adulterant or diluent, of a Schedule VI controlled substance;
- (4) Class B felony if the person possessed twenty-five pounds (25 lbs.) or more but less than one hundred pounds (100 lbs.) by aggregate weight, including an adulterant or diluent, of a Schedule VI controlled substance; or
- (5) Class A felony if the person possessed one hundred pounds (100 lbs.) or more but less than five hundred pounds (500 lbs.) by aggregate weight, including an adulterant or diluent, of a Schedule VI controlled substance.

## History

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Acts 2011, No. 570, § 57.



# A.C.A. § 5-71-202

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-71-202. Aggravated riot.

---

(a) A person commits the offense of aggravated riot if he or she commits the offense of riot when:

(1) The person knowingly possesses a deadly weapon; or

(2) The person knows that another person with whom he or she is acting possesses a deadly weapon.

(b)

(1) Aggravated riot is a Class D felony.

(2) A person convicted of aggravated riot shall be sentenced to a minimum of forty-five (45) days' imprisonment and shall be ordered to pay restitution for any physical injury, damage, or loss incurred as a result of the offense.

### History

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Acts 1975, No. 280, § 2903; A.S.A. 1947, § 41-2903; Acts 2007, No. 827, § 92; 2021, No. 1014, § 8.

# A.C.A. § 5-71-204

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-71-204. Arming rioters.

---

(a) A person commits the offense of arming rioters if he or she:

- (1) Furnishes a deadly weapon or explosive device to another person knowing the deadly weapon or explosive device is to be used in a riot; or
  - (2) Instructs another person in the preparation or use of a deadly weapon or explosive device knowing that the deadly weapon or explosive device is to be used in a riot.
- (b) Arming rioters is a Class B felony.

### History

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Acts 1975, No. 280, § 2905; A.S.A. 1947, § 41-2905.

# A.C.A. § 5-71-228

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 2 — Offenses Generally](#)

## 5-71-228. Obstruction of shooting, hunting, fishing, or trapping activities.

---

(a)

(1) It is unlawful for any person to willfully obstruct or impede the participation of any individual in the lawful activity of shooting, hunting, fishing, or trapping in this state.

(2) Nothing in this section prohibits a landowner or lessee from exercising his or her lawful right to prohibit hunting, fishing, or trapping on his or her land, or from exercising any other legal right.

(b)

(1) A court of general jurisdiction may enjoin conduct that would be in violation of subsection (a) of this section upon petition by a person affected or who reasonably may be affected by the conduct upon a showing that the conduct is threatened or that it has occurred on a particular premises in the past and that it is not unreasonable to expect that under similar circumstances the conduct will be repeated.

(2)

(A) A court of general jurisdiction may award damages, that may include an award for punitive damages, to any person adversely affected by a violation of subsection (a) of this section.

(B) In addition to any other item of special damages, the measure of damages may include expenditures of the affected person for license and permit fees, travel, guides, special equipment, and supplies, to the extent that the expenditures were rendered futile by prevention of taking of a wild animal or fish.

(c)

(1)

(A) Any person violating a provision of this section and in possession of a firearm is guilty of a Class A misdemeanor.

(B) Otherwise, a violation of this section is a Class B misdemeanor.

(2) If the person violating this section holds an Arkansas hunting, fishing, or trapping license at the time of conviction, the license is revoked.

(d) This section does not prevent a game warden or other law enforcement officer from performing his or her duties.

## History

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Acts 1991, No. 149, §§ 1-4; 2005, No. 1994, § 483; 2023, No. 852, § 2.

# A.C.A. § 5-71-229

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 2 — Offenses Generally](#)

### 5-71-229. Stalking.

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(a)

(1) A person commits stalking in the first degree if he or she knowingly engages in a course of conduct that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety, and the actor:

(A) Does so in contravention of an order of protection consistent with the Domestic Abuse Act of 1991, § 9-15-101 et seq., or a no contact order as set out in subdivision (a)(2)(A) of this section, protecting the same victim, or any other order issued by any court protecting the same victim;

(B) Has been convicted within the previous ten (10) years of:

(i) Stalking in the second degree;

(ii) Terroristic threatening, § 5-13-301, or terroristic act, § 5-13-310; or

(iii) Stalking or threats against another person's safety under the statutory provisions of any other state jurisdiction; or

(C) Is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon.

(2)

(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and the arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the first degree is a Class B felony.

(b)

(1) A person commits stalking in the second degree if he or she knowingly engages in a course of conduct that harasses another person and makes a terroristic threat with the purpose of placing that person in imminent fear of death or serious bodily injury or placing that person in imminent fear of the death or serious bodily injury of his or her immediate family.

(2)

(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the second degree is a Class C felony.

(c)

(1) A person commits stalking in the third degree if he or she knowingly commits an act that would place a reasonable person in the victim's position under emotional distress and in fear for his or her safety or a third person's safety.

(2)

(A) Upon pretrial release of the defendant, a judicial officer shall enter a no contact order in writing consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the defendant of penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.

(B) The no contact order remains in effect during the pendency of any appeal of a conviction under this subsection.

(C) The judicial officer or prosecuting attorney shall provide a copy of the no contact order to the victim and arresting law enforcement agency without unnecessary delay.

(D) If the judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter orders consistent with § 5-2-327 or § 5-2-328, or both.

(3) Stalking in the third degree is a Class A misdemeanor.

(d) It is an affirmative defense to prosecution under this section if the actor is a law enforcement officer, licensed private investigator, attorney, process server, licensed bail bondsman, or a store detective acting within the reasonable scope of his or her duty while conducting surveillance on an official work assignment.

(e) It is not a defense to a prosecution under this section that the actor was not given actual notice by the victim that the actor's conduct was not wanted.

(f) As used in this section:

(1)

(A) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, separated by at least thirty-six (36) hours, but occurring within one (1) year, including without limitation an act in which the actor directly, indirectly, or through a third party by any action, method, device, or means follows, monitors, observes, places under surveillance, threatens, or communicates to or about a person or interferes with a person's property.

(B)

(i) "Course of conduct" does not include constitutionally protected activity.

(ii) If the defendant claims that he or she was engaged in a constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence;

(2)

(A) "Emotional distress" means significant mental suffering or distress.

(B) "Emotional distress" does not require that the victim sought or received medical or other professional treatment or counseling; and

(3) "Harasses" means an act of harassment as prohibited by § 5-71-208.

## History

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Acts 1993, No. 379, §§ 1-3; 1993, No. 388, §§ 1-3; 1995, No. 1302, § 1; 2007, No. 827, § 94; 2013, No. 1014, § 1; 2017, No. 472, §§ 22-24; 2021, No. 1085, §§ 1, 2.

# A.C.A. § 5-71-301

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 3 — Promoting Civil Disorder](#)

### 5-71-301. Definitions.

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As used in this subchapter:

- (1) "Civil disorder" means any public disturbance involving an act of violence by an assemblage of three (3) or more persons that causes an immediate danger of or results in damage or injury to the property or person of any other individual;
- (2) "Explosive or incendiary device" includes:
  - (A) Dynamite and any other form of a high explosive;
  - (B) Any explosive bomb, grenade, missile, or similar device;
  - (C) An explosive material, meaning:
    - (i) An explosive;
    - (ii) A blasting agent; and
    - (iii) A detonator; and
  - (D) Any incendiary bomb or grenade, fire bomb, or similar device, and including any device that consists of or includes a breakable container containing a flammable liquid or compound and a wick composed of any material that when ignited is capable of igniting the flammable liquid or compound, and can be carried or thrown by one (1) individual acting alone; and
- (3) "Firearm" means the same as defined in § 5-1-102.

### History

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Acts 1985, No. 903, § 1; A.S.A. 1947, § 41-2926; Acts 1995, No. 989, § 1.

# A.C.A. § 5-71-302

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 3 — Promoting Civil Disorder](#)

### 5-71-302. Promoting civil disorder in the first degree.

- 
- (1) Any person who teaches or demonstrates to any other person the use, application, or construction of any firearm or explosive or incendiary device capable of causing injury or death to any person, knowing or intending that the firearm or explosive or incendiary device be used in furtherance of a civil disorder is guilty of the crime of promoting civil disorder in the first degree.
- (2) Promoting civil disorder in the first degree is a Class C felony.

## History

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Acts 1985, No. 903, § 2; A.S.A. 1947, § 41-2927.

# A.C.A. § 5-71-303

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 71 Riots, Disorderly Conduct, Etc.](#)
- [Subchapter 3 — Promoting Civil Disorder](#)

### 5-71-303. Unaffected lawful uses of weapons.

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Nothing in this subchapter shall be construed to prohibit the training or teaching of the use of a weapon for:

- (1) A law enforcement purpose;
- (2) Hunting;
- (3) Recreation;
- (4) Competition; or
- (5) Any other lawful use or activity.

### History

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Acts 1985, No. 903, § 3; A.S.A. 1947, § 41-2928.



# A.C.A. § 5-74-102

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 74 Gangs](#)
- [Subchapter 1 — Arkansas Criminal Gang, Organization, or Enterprise Act](#)

### 5-74-102. General legislative findings, declarations, and intent.

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(a)

(1) The General Assembly finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age, or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of groups engaging in random crimes of violence, and committing crimes for profit and violent crimes committed to protect or control market areas or "turf".

(2) It is not the intent of this subchapter to interfere with the constitutional exercise of the protected rights and freedoms of expression and association.

(3) The General Assembly recognizes the right of every citizen to harbor and constitutionally express beliefs on any lawful subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b)

(1) The General Assembly further finds that the State of Arkansas is experiencing an increase in crime committed by criminal gangs, organizations, or enterprises.

(2) These criminal gangs, organizations, or enterprises support themselves by engaging in criminal activity for profit, most commonly through the distribution of controlled substances and theft of property.

(3) These criminal gangs, organizations, or enterprises are becoming increasingly sophisticated at avoiding arrest and prosecution.

(4) With increasing frequency, criminals are using the property of another person which has been stolen, borrowed, leased, or maintained in another person's name to avoid detection and identification.

(5) This is particularly common among members and associates of criminal gangs, organizations, and enterprises.

(6) There is strong evidence that this increased sophistication is due largely to contact with other criminal gangs, organizations, or enterprises from other states.

(c)

(1) The General Assembly further finds that criminal gangs, organizations, and enterprises control their market areas by terrorizing the peaceful citizens in their neighborhoods with deliberate and random acts of violence.

(2) "Drive-by" shootings are becoming all too common in many Arkansas cities.

(3) One of the primary reasons for the increased homicide rate is the use of firearms by criminal gangs, organizations, or enterprises to control the crack cocaine market within their geographical "turf".

(d)

(1) The General Assembly further finds that in addition to the activity of street gangs, there are also other types of criminal organizations or enterprises operating in Arkansas.

(2) Some examples are garages that take parts from stolen automobiles, burglary or retail theft rings, and narcotics distribution organizations.

(3) The number of crimes committed by criminal organizations of all types is increasing.

(4) These ongoing organized criminal activities present a clear and present danger to public order and safety and are not constitutionally protected.

(e)

(1) It is the intent of the General Assembly to use as a model the federal continuing criminal enterprise statute, 21 U.S.C. § 848.

(2) This should provide law enforcement officers, prosecutors, and our courts with ample case law to guide in the interpretation of the language and the legislative intent.

(3) It is furthermore the intent of the General Assembly to focus the state's law enforcement agencies and prosecutors on investigating and prosecuting all ongoing organized criminal activity and to provide for penalties that will punish and deter organized ongoing criminal activity.

## History

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Acts 1993, No. 1002, § 1; 1995, No. 1296, § 9.

# A.C.A. § 5-74-106

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 74 Gangs](#)
- [Subchapter 1 — Arkansas Criminal Gang, Organization, or Enterprise Act](#)

### 5-74-106 Simultaneous possession of drugs and firearms.

---

(a) A person shall not unlawfully commit a felony violation of §§ 5-64-419 — 5-64-442 or unlawfully attempt, solicit, or conspire to commit a felony violation of §§ 5-64-419 — 5-64-442 while in possession of:

(1) A firearm; or

(2) Any implement or weapon that may be used to inflict serious physical injury or death, and that under the circumstances serves no apparent lawful purpose.

(b) Any person who violates this section is guilty of a Class Y felony.

(c) This section does not apply to a misdemeanor drug offense.

(d) It is a defense to this section that the defendant was in his or her home and the firearm or other implement or weapon was not readily accessible for use.

### History

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Acts 1993, No. 1002, § 1; 2007, No. 827, § 105; 2011, No. 570, § 70.

# A.C.A. § 5-74-107

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 74 Gangs](#)
- [Subchapter 1 — Arkansas Criminal Gang, Organization, or Enterprise Act](#)

### 5-74-106. Unlawful discharge of a firearm from a vehicle.

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(a)

(1) A person commits unlawful discharge of a firearm from a vehicle in the first degree if he or she knowingly discharges a firearm from a vehicle and by the discharge of the firearm causes death or serious physical injury to another person.

(2) Unlawful discharge of a firearm from a vehicle in the first degree is a Class Y felony.

(b)

(1) A person commits unlawful discharge of a firearm from a vehicle in the second degree if he or she recklessly discharges a firearm from a vehicle in a manner that creates a substantial risk of physical injury to another person or property damage to a home, residence, or other occupiable structure.

(2) Unlawful discharge of a firearm from a vehicle in the second degree is a Class B felony.

(c)

(1)

(A) Any vehicle or property used by the owner, or anyone acting with the knowledge and consent of the owner, to facilitate a violation of this section is subject to forfeiture.

(B) Subdivision (c)(1)(A) of this section is a new and independent ground for forfeiture.

(2)

(A) Property that is forfeitable based on this section is forfeited pursuant to and in accordance with the procedures for forfeiture in § 5-64-505.

(B) The reference in subdivision (c)(2)(A) of this section to § 5-64-505 is procedural only, and it is not a defense to forfeiture under this section that the discharge of a firearm did not involve a controlled substance.

### History

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Acts 1993, No. 1002, § 1; 2017, No. 333, § 6.

# A.C.A. § 5-75-102

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 75 Operation of Aircraft While Intoxicated](#)

### 5-75-102 Unlawful acts.

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(a)

(1) It is unlawful and punishable as provided in this chapter for any person who is intoxicated to operate, navigate, or be in actual physical control of any aircraft.

(2) It is unlawful and punishable as provided in this chapter for any person to operate, navigate, or be in actual physical control of any aircraft if at that time there was an alcohol concentration of four hundredths (0.04) or more in the person's breath or blood as determined by a chemical test of the person's blood, urine, breath, or other bodily substance.

(3) It is unlawful and punishable as provided in this chapter for any person who is at an airport to perform his or her duties as a member of the flight crew of an aircraft and who has an alcohol concentration of four hundredths (0.04) or more in the person's breath or blood as determined by a chemical test of the person's blood, urine, breath, or other bodily substance, to:

(A) Present himself or herself at:

(i) The security checkpoint at the airport;

(ii) The security identification area; or

(iii) An aircraft ramp; or

(B) Plan and accept flight documents at the ticket counter or gate.

(b)

(1) Any person who pleads guilty or nolo contendere to or is found guilty of violating subsection (a) of this section is guilty of a Class A misdemeanor.

(2) For a second offense occurring within one (1) year, any person who pleads guilty or nolo contendere to or is found guilty of violating subsection (a) of this section is guilty of a Class D felony.

(3) Any person who pleads guilty or nolo contendere to or is found guilty of violating subsection (a) of this section and who at the time of the offense was a flight crew member and was in possession of a weapon is guilty of a Class D felony.

(c)

(1)

(A) If a person under arrest for violating subsection (a) of this section refuses upon the request of a law enforcement officer to submit to a chemical test as provided in § 5-75-103, no chemical test shall be given.

(B) However, any person who refuses to submit to a chemical test as provided for in § 5-75-103 is guilty of a Class A misdemeanor.

(2) For a second offense occurring within one (1) year, any person who refuses to submit to a chemical test as provided for in § 5-75-103 is guilty of a Class D felony.

(d) A complete report of any arrest or conviction made under the provisions of this chapter shall be forwarded to the Federal Aviation Administration or any other agency responsible for the licensing of pilots or navigators.

### History

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Acts 1993, No. 824, § 2; 2001, No. 561, § 17; 2003, No. 1267, § 1.

# A.C.A. § 9-15-207

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 2. Domestic Relations](#)
- [Chapter 15 Domestic Abuse Act](#)
- [Subchapter 2 — Judicial Proceedings](#)

### 9-15-207 Order of protection — Enforcement — Penalties — Criminal jurisdiction.

(a) Any order of protection granted under this chapter is enforceable by a law enforcement agency with proper jurisdiction.

(b) An order of protection shall include a notice to the respondent or party restrained that:

(1) A violation of the order of protection is a Class A misdemeanor carrying a maximum penalty of one (1) year's imprisonment in the county jail or a fine of up to one thousand dollars (\$1,000), or both;

(2) A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(3) It is unlawful for an individual who is subject to an order of protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition under 18 U.S.C. § 922(g)(8) and (9) as it existed on January 1, 2019;

(4) A conviction of violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;

(5) A person who is a respondent or an enjoined party is restrained from harassing, stalking, or threatening a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party; and

(6) A person who is a respondent or an enjoined party is restrained from engaging in other conduct that would place a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party in reasonable fear of bodily injury.

(c) For respondents eighteen (18) years of age or older or emancipated minors, jurisdiction for the criminal offense of violating the terms of an order of protection is with the circuit court or other courts having jurisdiction over criminal matters.

(d)

(1) In the final order of protection, the petitioner's home or business address may be excluded from notice to the respondent.

(2) A court shall also order that the petitioner's copy of the order of protection be excluded from any address where the respondent happens to reside.

(e) A law enforcement officer shall not arrest a petitioner for the violation of an order of protection issued against a respondent.

(f) When a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and has been presented verification of the existence of the order of protection, the officer may arrest the respondent without a warrant whether or not the violation occurred in the presence of the officer if the order of protection was obtained according to this chapter and the Arkansas Rules of Criminal Procedure.

(g) An order of protection issued by a court of competent jurisdiction in any county of this state is enforceable in every county of this state by any court or law enforcement officer.

(h) An order of protection shall include either:

(1) A finding that the respondent presents a credible threat to the physical safety of a person named in an order of protection as a family or household member, a child of the family or household member, or a child of the respondent or enjoined party; or

(2) An explicit prohibition against the use, attempted use, or threatened use of physical force against the person named in the order of protection as a family or household member, a child of the family or

household member, or a child of the respondent or enjoined party which would reasonably be expected to cause bodily injury.

## History

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Acts 1991, No. 266, § 10; 1999, No. 1551, § 4; 2001, No. 1469, § 1; 2007, No. 676, § 2; 2009, No. 331, § 2; 2009, No. 698, § 8; 2019, No. 908, §§ 1, 2.

# A.C.A. § 9-15-403

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 2. Domestic Relations](#)
- [Chapter 15 Domestic Abuse Act](#)
- [Subchapter 4 — Spousal Abuse Safety Plan Act](#)

### 9-15-403. Definitions.

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As used in this subchapter:

(1) "Emotional abuse" means any of the following acts:

(A) Verbally attacking or threatening a spouse by yelling, screaming, or name-calling;

(B) Using criticism, social isolation, intimidation, or exploitation to dominate a spouse;

(C) Criminally harassing a spouse;

(D) Stalking a spouse;

(E) Threatening a spouse or his or her loved ones;

(F) Damaging a spouse's possessions; or

(G) Harming the pet of a spouse;

(2)

(A) "Physical abuse" means any of the following acts:

(i) Using physical force in a way that injures a spouse or puts him or her at risk of being injured; or

(ii) Beating, hitting, shaking, pushing, choking, biting, burning, kicking, or assaulting a spouse with a weapon.

(B) "Physical abuse" may consist of one (1) or more incidents described under subdivision (2)(A) of this section;

(3)

(A) "Sexual abuse" means any of the following acts:

(i) Forcing a spouse to participate in unwanted, unsafe, or degrading sexual activity; or

(ii) Using ridicule or other tactics to try to denigrate, control, or limit a spouse's sexuality or reproductive choices.

(B) "Sexual abuse" includes rape, sexual assault, or sexual harassment; and

(4)

(A) "Spousal abuse" means an act of violence or mistreatment that a woman or a man may experience at the hands of his or her marital partner, regardless of the timing of the act in terms of the stage of the relationship.

(B) "Spousal abuse" includes any of the following committed by a spouse against his or her spouse:

(i) Emotional abuse;

(ii) Physical abuse; or

(iii) Sexual abuse.

### History

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Acts 2007, No. 1414, § 1.



# A.C.A. § 9-27-313

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 3. Minors](#)
- [Chapter 27 Juvenile Courts and Proceedings](#)
- [Subchapter 3 — Arkansas Juvenile Code](#)

### 9-27-313 Taking into custody.

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(a)

(1) A juvenile only may be taken into custody without a warrant before service upon him or her of a petition and notice of hearing or order to appear as set out under § 9-27-312:

(A) Pursuant to an order of the circuit court under this subchapter;

(B) By a law enforcement officer without a warrant under circumstances as set forth in Rule 4.1 of the Arkansas Rules of Criminal Procedure; or

(C) By a designated person under § 12-18-1001 et seq.

(2) When any juvenile is taken into custody without a warrant, the officer taking the juvenile into custody shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(b)

(1) When any juvenile is taken into custody pursuant to a warrant, the officer taking the juvenile into custody shall immediately take the juvenile before the judge of the division of circuit court out of which the warrant was issued and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(2) The judge shall decide whether the juvenile should be tried as a delinquent or a criminal defendant pursuant to § 9-27-318.

(c) When a juvenile is taken into protective custody under § 12-18-1001, the person exercising protective custody shall:

(1)

(A) Notify the Department of Human Services and make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location.

(B) The notification to the custodial parent, noncustodial parent, guardian, or custodian of the juvenile shall be in writing and shall include a notice:

(i) That the juvenile has been taken into foster care;

(ii) Of the name, location, and phone number of the person at the department whom the custodial parent, noncustodial parent, guardian, or custodian of the juvenile can contact about the juvenile;

(iii) Of the rights of the juvenile and the rights of the custodial parent, noncustodial parent, guardian, or custodian of the juvenile to receive a copy of any petition filed under this subchapter;

(iv) Of the location and telephone number of the court; and

(v) Of the procedure for obtaining a hearing; or

(2) Return the juvenile to his or her home.

(d)

(1)

(A) A law enforcement officer shall take a juvenile to detention, immediately make every effort to notify the custodial parent, guardian, or custodian of the juvenile's location, and notify the juvenile intake officer within twenty-four (24) hours so that a petition may be filed if a juvenile is taken into custody for:

(i) Unlawful possession of a handgun, § 5-73-119(a)(1);

(ii) Possession of a handgun on school property, § 5-73-119(b)(1);

(iii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(iv) Any felony committed while armed with a firearm; or

(v) Criminal use of prohibited weapons, § 5-73-104.

(B) The authority of a juvenile intake officer to make a detention decision pursuant to § 9-27-322 shall not apply when a juvenile is detained pursuant to subdivision (d)(1)(A) of this section.

(C) A detention hearing shall be held by the court pursuant to § 9-27-326 within seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day.

(2) If a juvenile is taken into custody for an act that would be a felony if committed by an adult, other than a felony listed in subdivision (d)(1)(A) of this section, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A)

(i) Take the juvenile to detention.

(ii) The intake officer shall be notified immediately to make a detention decision pursuant to § 9-27-322 within twenty-four (24) hours of the time the juvenile was first taken into custody, and the prosecuting attorney shall be notified within twenty-four (24) hours.

(iii) If the juvenile remains in detention, a detention hearing shall be held no later than seventy-two (72) hours after the juvenile is taken into custody or if the seventy-two (72) hours ends on a Saturday, Sunday, or holiday, on the next business day;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the court and release the juvenile and within twenty-four (24) hours notify the juvenile intake officer and the prosecuting attorney so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(3) If a juvenile is taken into custody for an act that would be a misdemeanor if committed by an adult, the law enforcement officer shall immediately make every effort possible to notify the custodial parent, guardian, or custodian of the juvenile's location and may:

(A) Notify the juvenile intake officer, who shall make a detention decision pursuant to § 9-27-322;

(B) Pursuant to the Arkansas Rules of Criminal Procedure, issue a citation for the juvenile and his or her parents to appear for a first appearance before the circuit court and release the juvenile and notify the juvenile intake officer and the prosecuting attorney within twenty-four (24) hours so that a petition may be filed under this subchapter; or

(C) Return the juvenile to his or her home.

(4)

(A) In all instances when a juvenile may be detained, the juvenile may be held in a juvenile detention facility or a seventy-two-hour holdover if a bed is available in the facility or holdover.

(B) If not, an adult jail or lock-up may be used, as provided by § 9-27-336.

(5) In all instances when a juvenile may be detained, the intake officer shall immediately make every effort possible to notify the juvenile's custodial parent, guardian, or custodian.

(e) When a law enforcement officer takes custody of a juvenile under this subchapter for reasons other than those specified in subsection (c) of this section concerning dependent-neglected juveniles or subsection (d) of this section concerning delinquency, he or she shall:

(1)

(A)

(i) Take the juvenile to shelter care, notify the department and the intake officer of the court, and immediately make every possible effort to notify the custodial parent, guardian, or custodian of the juvenile's location.

(ii) The notification to parents shall be in writing and shall include a notice of the location of the juvenile, of the juvenile's and parents' rights to receive a copy of any petition filed under this subchapter, of the location and telephone number of the court, and of the procedure for obtaining a hearing.

(B)

(i) In cases when the parent, guardian, or other person contacted lives beyond a fifty-mile driving distance or lives out of state and the juvenile has been absent from his or her home or domicile for more than twenty-four (24) hours, the juvenile may be held in custody in a juvenile detention facility for purposes of identification, processing, or arranging for release or transfer to an alternative facility.

(ii) The holding shall be limited to the minimum time necessary to complete these actions and shall not occur in any facility utilized for incarceration of adults.

(iii) A juvenile held under this subdivision (e)(1)(B) must be separated from detained juveniles charged or held for delinquency.

(iv) A juvenile may not be held under this subdivision (e)(1)(B) for more than six (6) hours if the parent, guardian, or other person contacted lives in the state or twenty-four (24) hours, excluding weekends and holidays, if the parent, guardian, or other person contacted lives out of state; or  
(2) Return the juvenile to his or her home.

(f) If no delinquency petition to adjudicate a juvenile taken into custody is filed within twenty-four (24) hours after a detention hearing or ninety-six (96) hours or, if the ninety-six (96) hours ends on a Saturday, Sunday, or a holiday, at the close of the next business day, after an alleged delinquent juvenile is taken into custody, whichever is sooner, the alleged delinquent juvenile shall be discharged from custody, detention, or shelter care.

## History

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Acts 1989, No. 273, § 12; 1993, No. 882, § 1; 1994 (2nd Ex. Sess.), No. 55, § 2; 1994 (2nd Ex. Sess.), No. 56, § 2; 1999, No. 1340, § 12; 2001, No. 1582, § 1; 2001, No. 1610, § 2; 2003, No. 1166, § 8; 2005, No. 1990, § 5; 2009, No. 758, § 12; 2011, No. 873, § 1; 2015, No. 1024, §§ 1, 2; 2019, No. 531, § 1.

# A.C.A. § 9-27-318

## Copy Citation

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- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 3. Minors](#)
- [Chapter 27 Juvenile Courts and Proceedings](#)
- [Subchapter 3 — Arkansas Juvenile Code](#)

### 9-27-313. Filing and transfer to criminal division of circuit court.

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(a) The state may proceed with a case as a delinquency only when the case involves a juvenile:

(1) Fifteen (15) years of age or younger when the alleged delinquent act occurred, except as provided by subdivision (c)(2) of this section; or

(2) Less than eighteen (18) years of age when he or she engages in conduct that if committed by an adult would be any misdemeanor.

(b) The state may file a motion in the juvenile division of circuit court to transfer a case to the criminal division of circuit court or to designate a juvenile as an extended juvenile jurisdiction offender when a case involves a juvenile:

(1) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that if committed by an adult would be:

(A) Murder in the second degree, § 5-10-103;

(B) Battery in the second degree in violation of § 5-13-202(a)(2), (3), or (4);

(C) Possession of a handgun on school property, § 5-73-119(b)(1)(A);

(D) Aggravated assault, § 5-13-204;

(E) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(F) Any felony committed while armed with a firearm;

(G) Soliciting a minor to join a criminal street gang, § 5-74-203;

(H) Criminal use of prohibited weapons, § 5-73-104;

(I) First degree escape, § 5-54-110;

(J) Second degree escape, § 5-54-111; or

(K) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Aggravated robbery, § 5-12-103;

(vi) Rape, § 5-14-103;

(vii) Battery in the first degree, § 5-13-201;

(viii) First degree escape, § 5-54-110; and

(ix) Second degree escape, § 5-54-111;

(2) At least fourteen (14) years old when he or she engages in conduct that constitutes a felony under § 5-73-119(a); or

(3) At least fourteen (14) years old when he or she engages in conduct that, if committed by an adult, constitutes a felony and who has, within the preceding two (2) years, three (3) times been adjudicated as a delinquent juvenile for acts that would have constituted felonies if they had been committed by an adult.

(c) A prosecuting attorney may charge a juvenile in either the juvenile or criminal division of circuit court when a case involves a juvenile:

(1) At least sixteen (16) years old when he or she engages in conduct that, if committed by an adult, would be any felony; or

(2) Fourteen (14) or fifteen (15) years old when he or she engages in conduct that, if committed by an adult, would be:

- (A) Capital murder, § 5-10-101;
  - (B) Murder in the first degree, § 5-10-102;
  - (C) Kidnapping, § 5-11-102;
  - (D) Aggravated robbery, § 5-12-103;
  - (E) Rape, § 5-14-103;
  - (F) Battery in the first degree, § 5-13-201; or
  - (G) Terroristic act, § 5-13-310.
- (d) If a prosecuting attorney can file charges in the criminal division of circuit court for an act allegedly committed by a juvenile, the state may file any other criminal charges that arise out of the same act or course of conduct in the same division of the circuit court case if, after a hearing before the juvenile division of circuit court, a transfer is so ordered.
- (e) Upon the motion of the court or of any party, the judge of the division of circuit court in which a delinquency petition or criminal charges have been filed shall conduct a transfer hearing to determine whether to transfer the case to another division of circuit court.
- (f) The court shall conduct a transfer hearing within thirty (30) days if the juvenile is detained and no longer than ninety (90) days from the date of the motion to transfer the case.
- (g) In the transfer hearing, the court shall consider all of the following factors:
- (1) The seriousness of the alleged offense and whether the protection of society requires prosecution in the criminal division of circuit court;
  - (2) Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;
  - (3) Whether the offense was against a person or property, with greater weight being given to offenses against persons, especially if personal injury resulted;
  - (4) The culpability of the juvenile, including the level of planning and participation in the alleged offense;
  - (5) The previous history of the juvenile, including whether the juvenile had been adjudicated a juvenile offender and, if so, whether the offenses were against persons or property, and any other previous history of antisocial behavior or patterns of physical violence;
  - (6) The sophistication or maturity of the juvenile as determined by consideration of the juvenile's home, environment, emotional attitude, pattern of living, or desire to be treated as an adult;
  - (7) Whether there are facilities or programs available to the judge of the juvenile division of circuit court that are likely to rehabilitate the juvenile before the expiration of the juvenile's twenty-first birthday;
  - (8) Whether the juvenile acted alone or was part of a group in the commission of the alleged offense;
  - (9) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and
  - (10) Any other factors deemed relevant by the judge.
- (h)
- (1) The court shall make written findings on all of the factors set forth in subsection (g) of this section.
  - (2) Upon a finding by clear and convincing evidence that a case should be transferred to another division of circuit court, the judge shall enter an order to that effect.
- (i) Upon a finding by the criminal division of circuit court that a juvenile fourteen (14) through seventeen (17) years of age and charged with the crimes in subdivision (c)(2) of this section should be transferred to the juvenile division of circuit court, the criminal division of circuit court may enter an order to transfer as an extended juvenile jurisdiction case.
- (j) If a juvenile fourteen (14) or fifteen (15) years of age is found guilty in the criminal division of circuit court for an offense other than an offense listed in subsection (b) or subdivision (c)(2) of this section, the judge shall enter a juvenile delinquency disposition under § 9-27-330.
- (k) If the case is transferred to another division, any bail or appearance bond given for the appearance of the juvenile shall continue in effect in the division to which the case is transferred.
- (l) Any party may appeal from a transfer order.
- (m) The circuit court may conduct a transfer hearing and an extended juvenile jurisdiction hearing under § 9-27-503 at the same time.

## History

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Acts 1989, No. 273, § 17; 1991, No. 903, § 1; 1993, No. 1189, § 5; 1994 (2nd Ex. Sess.), No. 39, § 1; 1994 (2nd Ex. Sess.), No. 40, § 1; 1995, No. 797, § 1; 1997, No. 1229, § 7; 1997, No. 1299, § 7; 1999, No. 1192, § 16; 2001, No. 1582, § 2; 2003, No. 1166, § 10; 2003, No. 1809, § 3.

# A.C.A. § 9-27-330

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- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 3. Minors](#)
- [Chapter 27 Juvenile Courts and Proceedings](#)
- [Subchapter 3 — Arkansas Juvenile Code](#)

### 9-27-330 Disposition — Delinquency — Alternatives.

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(a) If a juvenile is found to be delinquent, the circuit court may enter an order making any of the following dispositions based upon the best interest of the juvenile:

(1)

(A) Transfer legal custody of the juvenile to any licensed agency responsible for the care of delinquent juveniles or to a relative or other individual.

(B)

(i) Commit the juvenile to the Division of Youth Services using the validated risk assessment system for Arkansas juvenile offenders selected by the Juvenile Judges Committee of the Arkansas Judicial Council with the division and distributed and administered by the Administrative Office of the Courts.

(ii)

(a) The validated risk assessment system selected by the Juvenile Judges Committee of the Arkansas Judicial Council with the division shall be:

(1) The only validated risk assessment used by courts for commitment;

(2) Used throughout the state; and

(3) Applied to all commitment decisions for all juvenile offenders.

(b) The validated risk assessment may be changed to another validated risk assessment system by the Juvenile Judges Committee of the Arkansas Judicial Council with the division.

(iii)

(a) In an order of commitment, the court may recommend that a juvenile be placed in a treatment program or community-based program instead of a youth services center and shall make specific findings in support of such a placement in the order.

(b) The court shall also specify in its recommendation whether it is requesting a division aftercare plan upon the juvenile's release from the division.

(c) A court may not commit a juvenile to the division if the juvenile is adjudicated delinquent of only a misdemeanor offense unless the:

(1) Juvenile is determined to be moderate risk or high risk by the validated risk assessment; and

(2) Court makes specific findings as to the factors considered for the disposition to be in the juvenile's best interest.

(d) A court may not commit a juvenile to the division if the juvenile is adjudicated delinquent of only a misdemeanor offense and the juvenile is determined to be low risk by the validated risk assessment.

(iv) A circuit court committing a juvenile to the division under subdivision (a)(1)(B)(iii) of this section shall make written findings and consider the following factors in making its determination to commit the juvenile to the division:

(a) The previous history of the juvenile, including without limitation whether:

(1) The juvenile has been adjudicated delinquent and, if so, whether the offense was against a person or property; and

(2) Any other previous history of antisocial behavior or patterns of physical violence exist;

(b) Whether the circuit court has previously offered less restrictive programs or services to the juvenile and whether there are less restrictive programs or services available to the court that are likely to rehabilitate the juvenile before the expiration of the court's jurisdiction;

(c) Written reports and other materials relating to the juvenile's mental, physical, educational, and social history; and

- (d) Any other factors deemed relevant by the circuit court.
- (v) Upon receipt of an order of commitment with recommendations for placement, the division shall consider the recommendations of the committing court in placing a juvenile in a youth services facility or a community-based program.
- (vi) Upon receipt of an order of commitment, the division or its contracted provider or designee shall prepare a written treatment plan that:
  - (a) States the treatment plan for the juvenile, including the types of programs and services that will be provided to the juvenile;
  - (b) States the anticipated length of the juvenile's commitment;
  - (c)
    - (1) States recommendations as to the most appropriate post-commitment placement for the juvenile.
    - (2) If the juvenile cannot return to the custody of his or her parent, guardian, or custodian because of child maltreatment, which includes the parent's, guardian's, or custodian's refusing to take responsibility for the juvenile, the division shall immediately contact the Office of Chief Counsel of the Department of Human Services.
    - (3) The Office of Chief Counsel of the Department of Human Services shall petition the committing court to determine the issue of custody of the juvenile;
    - (d) States any post-commitment community-based services that will be offered to the juvenile and to his or her family by the division or the community-based provider;
  - (e)
    - (1) Outlines an aftercare plan, if recommended, including specific terms and conditions required of the juvenile and the community-based provider.
    - (2) If the juvenile progresses in treatment and an aftercare plan is no longer recommended or the terms of the aftercare plan need to be amended as a result of treatment changes, any change in the terms of the aftercare plan and conditions shall be provided in writing and shall be explained to the juvenile.
    - (3) The terms and conditions shall be provided also to the prosecuting attorney, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian by the division or its designee before the juvenile's release from the division.
    - (4) All aftercare terms shall be provided to the committing court; and
  - (f)
    - (1) The treatment plan shall be filed with the committing court no later than thirty (30) days from the date of the commitment order or before the juvenile's release, whichever is sooner.
    - (2) A copy of the written treatment plan shall be provided and shall be explained to the juvenile.
    - (3) A copy shall be provided to the prosecutor, the juvenile's attorney, and to the juvenile's legal parent, guardian, or custodian and shall be filed in the court files of any circuit court where a dependency-neglect or family in need of services case concerning that juvenile is pending.
  - (C) This transfer of custody shall not include placement of adjudicated delinquents into the custody of the Department of Human Services for the purpose of foster care except as under the Child Maltreatment Act, § 12-18-101 et seq.;
  - (2) Order the juvenile or members of the juvenile's family to submit to physical, psychiatric, or psychological evaluations;
  - (3) Grant permanent custody to an individual upon proof that the parent or guardian from whom the juvenile has been removed has not complied with the orders of the court and that no further services or periodic reviews are required;
  - (4)
    - (A) Place the juvenile on probation under those conditions and limitations that the court may prescribe pursuant to § 9-27-339(a).
    - (B)
      - (i) In addition, the court shall have the right as a term of probation to require the juvenile to attend school or make satisfactory progress toward attaining a high school equivalency diploma approved by the Adult Education Section.
      - (ii) The court shall have the right to revoke probation if the juvenile fails to regularly attend school or if satisfactory progress toward attaining a high school equivalency diploma approved by the Adult Education Section is not being made;
  - (5) Order a probation fee, not to exceed twenty dollars (\$20.00) per month, as provided in § 16-13-326(a);
  - (6) Assess a court cost of no more than thirty-five dollars (\$35.00) to be paid by the juvenile, his or her parent, both parents, or his or her guardian;



(7)

(A) Order restitution to be paid by the juvenile, a parent, both parents, the guardian, or his or her custodian.

(B) If the custodian is the State of Arkansas, both liability and the amount that may be assessed shall be determined by the Arkansas State Claims Commission;

(8) Order a fine of not more than five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, or the guardian;

(9) Order that the juvenile and his or her parent, both parents, or the guardian perform court-approved volunteer service in the community designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile, not to exceed one hundred sixty (160) hours;

(10)

(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-approved parental responsibility training program if available.

(B) The court may make reasonable orders requiring proof of completion of the training program within a certain time period and payment of a fee covering the cost of the training program.

(C) The court may provide that any violation of such orders shall subject the parent, both parents, or the guardian to the contempt sanctions of the court;

(11)

(A)

(i) Order that the juvenile remain in a juvenile detention facility for an indeterminate period not to exceed ninety (90) days.

(ii) The court may further order that the juvenile be eligible for work release or to attend school or other educational or vocational training.

(B) The juvenile detention facility shall afford opportunities for education, recreation, and other rehabilitative services to adjudicated delinquents;

(12) Place the juvenile on residential detention with electronic monitoring, either in the juvenile's home or in another facility as ordered by the court;

(13)

(A) Order the parent, both parents, or the guardian of any juvenile adjudicated delinquent and committed to a youth services center, detained in a juvenile detention facility, or placed on electronic monitoring to be liable for the cost of the commitment, detention, or electronic monitoring.

(B)

(i) The court shall take into account the financial ability of the parent, both parents, or the guardian to pay for the commitment, detention, or electronic monitoring.

(ii) The court shall take into account the past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.

(iii) If the parent is a noncustodial parent, the court shall take into account the opportunity the parent has had to correct the delinquent juvenile's conduct.

(iv) The court shall take into account any other factors the court deems relevant;

(14) When a juvenile is committed to a youth services center or detained in a juvenile detention facility and the juvenile is covered by private health insurance, order the parent or guardian to provide information on the juvenile's health insurance coverage, including a copy of the health insurance policy and the pharmacy card when available, to the juvenile detention center or youth services center that has physical custody of the juvenile; or

(15)

(A) Order the Department of Finance and Administration to suspend the driving privileges of any juvenile adjudicated delinquent.

(B) The order shall be prepared and transmitted to the Department of Finance and Administration within twenty-four (24) hours after the juvenile has been found delinquent and is sentenced to have his or her driving privileges suspended.

(C) The court may provide in the order for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school or for other circumstances.

(b) The court shall specifically retain jurisdiction to amend or modify any orders entered pursuant to this section.

(c)

(1) If a juvenile is adjudicated delinquent for possession of a handgun, as provided in § 5-73-119, or criminal use of prohibited weapons, as provided in § 5-73-104, or possession of a defaced firearm, as provided in § 5-73-107, then the court shall commit the juvenile:

- (A) To a juvenile detention facility, as provided in subdivision (a)(11) of this section;
  - (B) To a youth services center operated by the Department of Human Services State Institutional System Board, as provided in subdivision (a)(1) of this section; or
  - (C) Place the juvenile on residential detention, as provided in subdivision (a)(12) of this section.
- (2) The court may take into consideration any preadjudication detention period served by the juvenile and sentence the juvenile to time served.
- (d)
- (1) When the court orders restitution pursuant to subdivision (a)(7) of this section, the court shall consider the following:
- (A) The amount of restitution may be decided:
    - (i) If the juvenile is to be responsible for the restitution, by agreement between the juvenile and the victim;
    - (ii) If the parent or parents are to be responsible for the restitution, by agreement between the parent or parents and the victim;
    - (iii) If the juvenile and the parent or parents are to be responsible for the restitution, by agreement between the juvenile, his or her parent or parents, and the victim; or
    - (iv) At a hearing at which the state must prove the restitution amount by a preponderance of the evidence;
  - (B) Restitution shall be made immediately unless the court determines that the parties should be given a specified time to pay or should be allowed to pay in specified installments; and
  - (C)
    - (i) In determining if restitution should be paid and by whom, as well as the method and amount of payment, the court shall take into account:
      - (a) The financial resources of the juvenile, his or her parent, both parents, or the guardian and the burden the payment will impose with regard to the other obligations of the paying party;
      - (b) The ability to pay restitution on an installment basis or on other conditions to be fixed by the court;
      - (c) The rehabilitative effect of the payment of restitution and the method of payment; and
      - (d) The past efforts of the parent, both parents, or the guardian to correct the delinquent juvenile's conduct.
    - (ii)
      - (a) The court shall take into account whether the parent is a noncustodial parent.
      - (b) The court may take into consideration the opportunity the parent has had to correct the delinquent juvenile's conduct.
    - (iii) The court shall take into account any other factors the court deems relevant.
- (2) If the juvenile is placed on probation, any restitution ordered under this section may be a condition of the probation.
- (e) When an order of restitution is entered, it may be collected by any means authorized for the enforcement of money judgments in civil actions, and it shall constitute a lien on the real and personal property of the persons and entities the order of restitution is directed upon in the same manner and to the same extent as a money judgment in a civil action.
- (f)
- (1) The judgment entered by the court may be in favor of the state, the victim, or any other appropriate beneficiary.
- (2) The judgment may be discharged by a settlement between the parties ordered to pay restitution and the beneficiaries of the judgment.
- (g) The court shall determine priority among multiple beneficiaries on the basis of the seriousness of the harm each suffered, their other resources, and other equitable factors.
- (h) If more than one (1) juvenile is adjudicated delinquent of an offense for which there is a judgment under this section, the juveniles are jointly and severally liable for the judgment, unless the court determines otherwise.
- (i)
- (1) A judgment under this section does not bar a remedy available in a civil action under other law.
- (2) A payment under this section must be credited against a money judgment obtained by the beneficiary of the payment in a civil action.
- (3) A determination under this section and the fact that payment was or was not ordered or made are not admissible in evidence in a civil action and do not affect the merits of the civil action.
- (j) If a juvenile is adjudicated delinquent as an extended juvenile jurisdiction offender, the court shall enter the following dispositions:
- (1) Order any of the juvenile delinquency dispositions authorized by this section; and

(2) Suspend the imposition of an adult sentence pending court review.

## History

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Acts 1989, No. 273, § 29; 1991, No. 763, § 1; 1993, No. 1227, § 4; 1994 (2nd Ex. Sess.), No. 61, § 1; 1994 (2nd Ex. Sess.), No. 62, § 1; 1995, No. 533, § 9; 1995, No. 779, § 1; 1995, No. 798, § 1; 1995, No. 1261, § 14; 1995, No. 1335, § 1; 1995, No. 1337, § 5; 1997, No. 1118, § 3; 1999, No. 1192, § 19; 1999, No. 1340, §§ 15, 16; 2003, No. 1166, § 16; 2003, No. 1319, § 17; 2003, No. 1809, § 6; 2005, No. 1990, § 9; 2007, No. 587, § 16; 2009, No. 758, § 14; 2009, No. 956, § 12; 2015, No. 1115, § 22; 2019, No. 189, § 4; 2019, No. 910, § 2194.

# A.C.A. § 9-27-501

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 3. Minors](#)
- [Chapter 27 Juvenile Courts and Proceedings](#)
- [Subchapter 5 — Extended Juvenile Jurisdiction](#)

### 9-27-501 Extended juvenile jurisdiction designation.

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(a) The state may request an extended juvenile jurisdiction designation in a delinquency petition or file a separate motion if the:

(1) Juvenile, under thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102, and the state has overcome presumptions of lack of fitness to proceed and lack of capacity as set forth in § 9-27-502;

(2)

(A) Juvenile, thirteen (13) years of age at the time of the alleged offense, is charged with capital murder, § 5-10-101, or murder in the first degree, § 5-10-102.

(B) However, juveniles thirteen (13) years of age at the time of the alleged offense shall have an evaluation pursuant to § 9-27-502, and the burden will be upon the juvenile to establish lack of fitness to proceed and lack of capacity;

(3) Juvenile, fourteen (14) or fifteen (15) years of age at the time of the alleged offense, is charged with any of the following crimes:

(A) Capital murder, § 5-10-101;

(B) Murder in the first degree, § 5-10-102;

(C) Murder in the second degree, § 5-10-103;

(D) Kidnapping, § 5-11-102;

(E) Aggravated robbery, § 5-12-103;

(F) Battery in the first degree, § 5-13-201;

(G) Battery in the second degree in violation of § 5-13-202(a)(2), (3), or (4);

(H) Aggravated assault, § 5-13-204;

(I) Terroristic act, § 5-13-310;

(J) Rape, § 5-14-103;

(K) Sexual assault in the second degree, § 5-14-125;

(L) First degree escape, § 5-54-110;

(M) Second degree escape, § 5-54-111;

(N) Criminal use of prohibited weapons, § 5-73-104;

(O) Possession of a handgun on school property, § 5-73-119(b)(1)(A);

(P) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(Q) Any felony involving a firearm;

(R) Soliciting or recruiting a minor to join or to remain a member of a criminal gang, organization, or enterprise, § 5-74-203; or

(S) A felony attempt, solicitation, or conspiracy to commit any of the following offenses:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Murder in the second degree, § 5-10-103;

(iv) Kidnapping, § 5-11-102;

(v) Aggravated robbery, § 5-12-103;

(vi) Battery in the first degree, § 5-13-201;

(vii) Rape, § 5-14-103;

(viii) First degree escape, § 5-54-110; and

(ix) Second degree escape, § 5-54-111; or

- (4) Juvenile is at least sixteen (16) years of age when he or she engages in conduct that, if committed by an adult, would be a felony.
- (b) The juvenile's attorney may file a motion to request extended juvenile jurisdiction if the state could have filed pursuant to subsection (a) of this section.

## History

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Acts 1999, No. 1192, § 1; 2003, No. 1809, § 13; 2023, No. 692, § 1.

## A.C.A. § 9-28-409

### Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 3. Minors](#)
- [Chapter 28 Placement and Detention Programs](#)
- [Subchapter 4 — Child Welfare Agency Licensing Act](#)

### 9-27-409. Criminal record and child maltreatment checks. [Effective January 1, 2024.]

(a)

(1) Each of the following persons in a child welfare agency shall be checked with the Child Maltreatment Central Registry in his or her state of residence and any state of residence in which the person has lived for the past five (5) years and in the person's state of employment, if different, for reports of child maltreatment in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) A foster parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(D) An adoptive parent and all household members fourteen (14) years of age and older, excluding children in foster care;

(E) An owner having direct and unsupervised contact with children;

(F) A member of the agency's board of directors having direct and unsupervised contact with children; and

(G) An adult working in a childcare institution.

(2) The Child Welfare Agency Review Board shall have the authority to deny a license or church-operated exemption to any applicant found to have any record of founded child maltreatment in the official record of the registry.

(3)

(A) Any person required to be checked under this section who is found to have any record of child maltreatment in the official record of the registry shall be reviewed by the owner or operator of the facility in consultation with the Child Welfare Agency Review Board to determine appropriate corrective action measures that would indicate, but are not limited to, training, probationary employment, or nonselection for employment.

(B) The Child Welfare Agency Review Board shall also have the authority to deny a license or church-operated exemption to an applicant who continues to employ a person with any record of founded child maltreatment.

(4) All persons required to be checked with the registry under this subsection shall repeat the check at a minimum of every two (2) years, including adoptive parents who reside in Arkansas pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(b)

(1) Each of the following persons in a child welfare agency shall be checked with the Identification Bureau of the Division of Arkansas State Police to determine if the person has pleaded guilty or nolo contendere to or has been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care;

(F)

(i) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care, who are not residents of Arkansas shall provide state-of-residence criminal records checks, if available; and

(G) An adult working in a childcare institution.

(2) A child in the custody of the Department of Human Services shall not be placed in an approved home of any foster parent or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have been checked with the Identification Bureau of the Division of Arkansas State Police to determine if any of the persons have pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter in compliance with policy and procedures promulgated by the Child Welfare Agency Review Board at a minimum of every two (2) years.

(3)

(A) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the Child Welfare Agency Review Board, evidence that all persons required to be checked with the Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.

(B) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(4) All persons required to be checked with the Division of Arkansas State Police under this subsection shall repeat the check at a minimum of every five (5) years, except that adoptive parents who reside in Arkansas shall repeat the check every two (2) years pending court issuance of a final decree of adoption, at which point repeat checks shall no longer be required.

(c)

(1) Each of the following persons in a child welfare agency shall have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if the person has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this section:

(A) An employee having direct and unsupervised contact with children;

(B) A volunteer having direct and unsupervised contact with children;

(C) An owner having direct and unsupervised contact with children;

(D) A member of the agency's board of directors having direct and unsupervised contact with children;

(E) Foster parents, house parents, and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care;

(F)

(i) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care.

(ii) Adoptive parents and each member of the household eighteen and one-half (18½) years of age and older, excluding children in foster care, shall not be required to have a criminal background check performed by the Federal Bureau of Investigation if:

(a) The adoptive parents and each member of the household age eighteen and one-half (18½) years of age and older, excluding children in foster care, have continuously resided in a state for at least five (5) years before the adoption; and

(b) The state-of-residence criminal records check is available; and

(G) An adult working in a childcare institution.

(2)

(A)

(i) A child in the custody of the department shall not be placed in an approved home of any foster or adoptive parent unless all household members eighteen and one-half (18½) years of age and older, excluding children in foster care, have a fingerprint-based criminal background check performed by the Federal Bureau of Investigation in compliance with federal law and regulation to determine if any of the persons has pleaded guilty or nolo contendere to or been found guilty of the offenses listed in this subchapter.

(ii) A household member who turns eighteen (18) years of age has up to six (6) months from the date of his or her eighteenth birthday to have a background check completed.

(B) The owner or operator of a child welfare agency shall maintain on file, subject to inspection by the Child Welfare Agency Review Board, evidence that all persons required to be checked with the

Identification Bureau of the Division of Arkansas State Police under this subsection have been approved or disqualified in accordance with the rules of the appropriate licensing or certifying agency.  
(C) Failure to maintain that evidence on file will be prima facie grounds to revoke the license or church-operated exemption of the owner or operator of the child welfare agency.

(d)

(1) Each person required to have a criminal records check under this subchapter shall complete a criminal records check form developed by the department and shall sign the form that contains the following:

(A) Certification that the subject of the check consents to the completion of the check;

(B) Certification that the subject of the check has not pleaded guilty or nolo contendere to or been found guilty of a crime and if the subject of the check has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) Notification that the subject of the check may challenge the accuracy and completeness of any information in any report and obtain a prompt determination as to the validity of the challenge before a final determination is made by the Child Welfare Agency Review Board with respect to his or her employment status or licensing status;

(D) Notification that the subject of the check may be denied a license or exemption to operate a child welfare agency or may be denied unsupervised access to children in the care of a child welfare agency due to information obtained by the check that indicates that the subject of the check has pleaded guilty or nolo contendere to or been found guilty of or is under pending indictment for a crime listed in this subchapter;

(E) Notification that any background check and the results thereof shall be handled in accordance with the requirements of Pub. L. No. 92-544; and

(F) Under § 25-32-107(d), the subject of the background check may submit an electronic signature to complete the records check.

(2) The owner or operator of the child welfare agency shall submit the criminal records check form to the Division of Child Care and Early Childhood Education for the employee or volunteer, who shall not begin employment or volunteerism until the registry check and criminal records checks required under this subchapter are completed.

(3) Nothing in this section shall be construed to prevent the Child Welfare Agency Review Board from denying a license or exemption to an owner or preventing an operator or employee in a child welfare agency from having unsupervised access to children by reason of the pending appeal of a criminal conviction or child maltreatment determination.

(4) In the event a legible set of fingerprints as determined by the Division of Arkansas State Police and the Federal Bureau of Investigation cannot be obtained after a minimum of two (2) attempts by qualified law enforcement personnel, the Child Welfare Agency Review Board shall determine eligibility based upon a name check by the Division of Arkansas State Police and the Federal Bureau of Investigation.

(5)

(A) An owner or operator of a child welfare agency shall not be liable during a conditional period of service for hiring any person required to have a background check pursuant to this subchapter who may be subject to a charge of false swearing upon completion of the registry and criminal records check.

(B)

(i) Pursuant to this subchapter, false swearing shall occur when a person while under oath provides false information or omits information that the person knew or reasonably should have known was material.

(ii) Lack of knowledge that information is material is not a defense to a charge of false swearing.

(C) For purposes of this subchapter, false swearing is a Class A misdemeanor.

(e)

(1) A report of a pleading of guilty or nolo contendere or a finding of guilt to any charge listed in this subsection shall be:

(A) Returned to the Division of Child Care and Early Childhood Education for review; and

(B) Considered regardless of whether or not the record is expunged, pardoned, or otherwise sealed.

(2) A person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section shall be absolutely and permanently prohibited from having direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by any court in the



State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

- (A) Abuse of an endangered or impaired person, if felony, § 5-28-103;
- (B) Arson, § 5-38-301;
- (C) Capital murder, § 5-10-101;
- (D) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
- (E) Kidnapping, § 5-11-102;
- (F) Murder in the first degree, § 5-10-102;
- (G) Murder in the second degree, § 5-10-103;
- (H) Rape, § 5-14-103;
- (I) Sexual assault in the first degree, § 5-14-124;
- (J) Sexual assault in the second degree, § 5-14-125;
- (K) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and
- (L) Trafficking of persons, § 5-18-103.

(3) Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section shall not be eligible to have direct and unsupervised contact with a child in the care of a child welfare agency if that person has pleaded guilty or nolo contendere to or been found guilty of any of the following offenses by a court in the State of Arkansas, of a similar offense in a court of another state, or of a similar offense by a federal court, unless the conviction is vacated or reversed:

- (A) Criminal attempt, § 5-3-201, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;
- (B) Criminal complicity, § 5-3-202, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;
- (C) Criminal conspiracy, § 5-3-401, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;
- (D) Criminal solicitation, § 5-3-301, to commit any offenses in subdivision (e)(2) or subdivision (e)(3) of this section;
- (E) Assault in the first, second, or third degree, §§ 5-13-205 — 5-13-207;
- (F) Aggravated assault, § 5-13-204;
- (G) Aggravated assault on a family or household member, § 5-26-306;
- (H) Battery in the first, second, or third degree, §§ 5-13-201 — 5-13-203;
- (I) Breaking or entering, § 5-39-202;
- (J) Burglary, § 5-39-201;
- (K) Coercion, § 5-13-208;
- (L) Computer crimes against minors, § 5-27-601 et seq.;
- (M) Contributing to the delinquency of a juvenile, § 5-27-220;
- (N) Contributing to the delinquency of a minor, § 5-27-209;
- (O) Criminal impersonation, § 5-37-208;
- (P) Criminal use of a prohibited weapon, § 5-73-104;
- (Q) Communicating a death threat concerning a school employee or student, § 5-17-101;
- (R) Domestic battery in the first, second, or third degree, §§ 5-26-303 — 5-26-305;
- (S) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- (T) Endangering the welfare of a minor in the first or second degree, §§ 5-27-205 and 5-27-206;
- (U) Endangering the welfare of an incompetent person in the second degree, § 5-27-202;
- (V) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
- (W) False imprisonment in the first or second degree, §§ 5-11-103 and 5-11-104;
- (X) Felony abuse of an endangered or impaired person, § 5-28-103;
- (Y) Felony interference with a law enforcement officer, § 5-54-104;
- (Z) Felony violation of the Uniform Controlled Substance Act, § 5-64-101 et seq., § 5-64-201 et seq., § 5-64-301 et seq., § 5-64-401 et seq., and § 5-64-501 et seq.;
- (A)(A) Financial identity fraud, § 5-37-227;
- (B)(B) Forgery, § 5-37-201;
- (C)(C) Incest, § 5-26-202;
- (D)(D) Interference with court ordered custody, § 5-26-502;
- (E)(E) Interference with visitation, § 5-26-501;
- (F)(F) Introduction of controlled substance into the body of another person, § 5-13-210;
- (G)(G) Manslaughter, § 5-10-104;

**(H)(H)** Negligent homicide, § 5-10-105;  
**(I)(I)** Obscene performance at a live public show, § 5-68-305;  
**(J)(J)** Offense of cruelty to animals, § 5-62-103;  
**(K)(K)** Offense of aggravated cruelty to a dog, cat, or equine, § 5-62-104;  
**(L)(L)** Pandering or possessing a visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;  
**(M)(M)** Permanent detention or restraint, § 5-11-106;  
**(N)(N)** Permitting abuse of a minor, § 5-27-221;  
**(O)(O)** Producing, directing, or promoting a sexual performance by a child, § 5-27-403;  
**(P)(P)** Promoting obscene materials, § 5-68-303;  
**(Q)(Q)** Promoting obscene performance, § 5-68-304;  
**(R)(R)** Promoting prostitution in the first, second, or third degree, §§ 5-70-104 — 5-70-106;  
**(S)(S)** Prostitution, § 5-70-102;  
**(T)(T)** Public display of obscenity, § 5-68-205;  
**(U)(U)** Resisting arrest, § 5-54-103;  
**(V)(V)** Robbery, § 5-12-102;  
**(W)(W)** Aggravated robbery, § 5-12-103;  
**(X)(X)** Sexual extortion, § 5-14-113;  
**(Y)(Y)** Sexual solicitation, § 5-70-103;  
**(ZZ)** Sexual offenses, § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110;  
**(A)(A)(A)** Simultaneous possession of drugs and firearms, § 5-74-106;  
**(B)(B)(B)** Soliciting money or property from incompetents, § 5-27-229;  
**(C)(C)(C)** Stalking, § 5-71-229;  
**(D)(D)(D)** Terroristic act, § 5-13-310;  
**(E)(E)(E)** Terroristic threatening, § 5-13-301;  
**(F)(F)(F)** Theft by receiving, § 5-36-106;  
**(G)(G)(G)** Theft of property, § 5-36-103;  
**(H)(H)(H)** Theft of public benefits, § 5-36-202;  
**(I)(I)(I)** Theft of services, § 5-36-104;  
**(J)(J)(J)** Transportation of minors for prohibited sexual conduct, § 5-27-305;  
**(K)(K)(K)** Unlawful discharge of a firearm from a vehicle, § 5-74-107; and  
**(L)(L)(L)** Voyeurism, § 5-16-102.

**(4)** A former or future law of this or any other state or of the federal government that is substantially equivalent to one (1) of the offenses listed in subdivision (e)(3) of this section shall be considered as prohibiting under subdivisions (e)(2) and (3) of this section.

**(f)**

**(1)** A person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be absolutely disqualified from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency during the period of the person's confinement, probation, parole, or post-release supervision unless the conviction is vacated or reversed.

**(2)** Except as provided under subdivision (f)(3) of this section, a person who has pleaded guilty or nolo contendere to or been found guilty of one (1) of the offenses listed in subdivision (e)(3) of this section shall not work in a child welfare agency unless:

**(A)** The date of a plea of guilty or nolo contendere, or the finding of guilt for a misdemeanor offense is at least five (5) years from the date of the records check; and

**(B)** There have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the background check request.

**(3)**

**(A)** Except as provided under subdivision (f)(1) of this section, a person who is required to have a criminal records check under subdivision (b)(1) or subdivision (c)(1) of this section who has pleaded guilty or nolo contendere to or been found guilty of any of the offenses listed in subdivision (e)(3) of this section shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or employee in a child welfare agency after the completion of his or her term of confinement, probation, parole, or post-release supervision unless the conviction is vacated or reversed.

(B) An owner, operator, volunteer, foster parent, adoptive parent, household member of a foster parent or adoptive parent, member of any child welfare agency's board of directors, or an employee in a child welfare agency shall not petition the Child Welfare Agency Review Board unless the agency supports the petition, which can be rebutted in the following manner:

(i) The applicant shall petition the Child Welfare Agency Review Board to make a determination that the applicant does not pose a risk of harm to any person;

(ii) The applicant shall bear the burden of making such a showing; and

(iii)

(a) The Child Welfare Agency Review Board may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having pleaded guilty or nolo contendere to or been found guilty of an offense listed in this section upon making a determination that the applicant does not pose a risk of harm to any person served by the facility.

(b) In making a determination, the Child Welfare Agency Review Board shall consider:

(1) The nature and severity of the crime;

(2) The consequences of the crime;

(3) The number and frequency of the crimes;

(4) The relation between the crime and the health, safety, and welfare of any person, such as the:

(A) Age and vulnerability of the crime victim;

(B) Harm suffered by the victim; and

(C) Similarity between the victim and the persons served by a child welfare agency;

(5) The time elapsed without a repeat of the same or similar event;

(6) Documentation of successful completion of training or rehabilitation related to the incident; and

(7) Any other information that relates to the applicant's ability to care for children or is deemed relevant.

(c) The Child Welfare Agency Review Board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of a child welfare agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action of the Child Welfare Agency Review Board and is not subject to review.

(d) Information obtained from the criminal records check and the national fingerprint criminal background checks is confidential and shall not be disclosed by the department except:

(1) To the members of the Child Welfare Agency Review Board during a Child Welfare Agency Review Board meeting only if no redisclosure by a Child Welfare Agency Review Board member occurs and all copies shared with the Child Welfare Agency Review Board members are returned to the department; or

(2) To the applicant and his or her attorney during a Child Welfare Agency Review Board meeting only if no redisclosure by the applicant or his or her attorney occurs and all copies shared with the applicant and his or her attorney are returned to the department.

## History

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Acts 1997, No. 1041, § 9; 1999, No. 328, § 1; 2001, No. 1211, § 2; 2003, No. 1087, § 11; 2005, No. 1766, § 3; 2005, No. 1923, § 1; 2007, No. 634, § 3; 2009, No. 723, §§ 8-10; 2011, No. 522, §§ 21, 22; 2011, No. 570, § 71; 2011, No. 591, § 11; 2013, No. 1275, § 8; 2015, No. 545, § 2; 2015, No. 547, § 3; 2015, No. 861, §§ 3, 4; 2017, No. 209, § 5; 2017, No. 367, § 10; 2017, No. 389, § 9; 2017, No. 664, § 5; 2019, No. 318, §§ 13; 2021, No. 269, §§ 24; 2023, No. 186, § 1; 2023, No. 619, § 11; 2023, No. 659, §§ 54, 55.

# A.C.A. § 12-18-103

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 12 Law Enforcement, Emergency Management, and Military Affairs](#)
- [Subtitle 2. Law Enforcement Agencies and Programs](#)
- [Chapter 18 Child Maltreatment Act](#)
- [Subchapter 1 — General Provisions](#)

## 12-18-103. Definitions.

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As used in this chapter:

(1)

(A) "Abandonment" means:

- (i) The failure of a parent to provide reasonable support and to maintain regular contact with a child through statement or contact when the failure is accompanied by an intention on the part of the parent to permit the condition to continue for an indefinite period in the future or the failure of a parent to support or maintain regular contact with a child without just cause; or
- (ii) An articulated intent to forego parental responsibility.

(B) "Abandonment" does not include:

- (i) Acts or omissions of a parent toward a married minor; or
- (ii) A situation in which a child has disrupted his or her adoption and the adoptive parent has exhausted the available resources;

(2)

(A) "Abortion" means the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy of a woman with knowledge that the termination by those means will with reasonable likelihood cause the death of the unborn child.

(B) "Abortion" does not mean the act of using or prescribing any instrument, medicine, drug, or any other substance, device, or means with the intent to terminate the clinically diagnosable pregnancy if done with the intent to:

- (i) Save the life or preserve the health of the unborn child;
- (ii) Remove a dead unborn child caused by spontaneous abortion; or
- (iii) Remove an ectopic pregnancy;

(3)

(A) "Abuse" means any of the following acts or omissions by a parent, guardian, custodian, foster parent, person eighteen (18) years of age or older living in the home with a child whether related or unrelated to the child, or any person who is entrusted with the child's care by a parent, guardian, custodian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, a significant other of the child's parent, or any person legally responsible for the child's welfare, but excluding the spouse of a minor:

- (i) Extreme or repeated cruelty to a child;
- (ii) Engaging in conduct creating a realistic and serious threat of death, permanent or temporary disfigurement, or impairment of any bodily organ;
- (iii) Injury to a child's intellectual, emotional, or psychological development as evidenced by observable and substantial impairment of the child's ability to function within the child's normal range of performance and behavior;
- (iv) Any injury that is at variance with the history given;
- (v) Any nonaccidental physical injury;
- (vi) Any of the following intentional or knowing acts, with physical injury and without justifiable cause:
  - (a) Throwing, kicking, burning, biting, or cutting a child;
  - (b) Striking a child with a closed fist;
  - (c) Shaking a child; or

- (d) Striking a child on the face or head;
- (vii) Any of the following intentional or knowing acts, with or without physical injury:
  - (a) Striking a child six (6) years of age or younger on the face or head;
  - (b) Shaking a child three (3) years of age or younger;
  - (c) Interfering with a child's breathing;
  - (d) Pinching, biting, or striking a child in the genital area;
  - (e) Tying a child to a fixed or heavy object or binding or tying a child's limbs together;
  - (f) Giving a child or permitting a child to consume or inhale a poisonous or noxious substance not prescribed by a physician that has the capacity to interfere with normal physiological functions;
  - (g) Giving a child or permitting a child to consume or inhale a substance not prescribed by a physician that has the capacity to alter the mood of the child, including, but not limited to, the following:
    - (1) Marijuana;
    - (2) Alcohol, excluding alcohol given to a child during a recognized and established religious ceremony or service;
    - (3) A narcotic; or
    - (4) An over-the-counter drug if a person purposely administers an overdose to a child or purposely gives an inappropriate over-the-counter drug to a child and the child is detrimentally impacted by the overdose or the over-the-counter drug;
    - (h) Exposing a child to a chemical that has the capacity to interfere with normal physiological functions, including, but not limited to, a chemical used or generated during the manufacture of methamphetamine; or
    - (i) Subjecting a child to Munchausen syndrome by proxy or a factitious illness by proxy if the incident is confirmed by medical personnel;
  - (viii) Recruiting, harboring, transporting, or obtaining a child for labor or services, through force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or
  - (ix) Female genital mutilation.
- (B)
  - (i) The list in subdivision (3)(A) of this section is illustrative of unreasonable action and is not intended to be exclusive.
  - (ii) No unreasonable action shall be construed to permit a finding of abuse without having established the elements of abuse.
- (C)
  - (i) "Abuse" does not include physical discipline of a child when it is reasonable and moderate and is inflicted by a parent or guardian for purposes of restraining or correcting the child.
  - (ii) "Abuse" does not include when a child suffers transient pain or minor temporary marks as the result of an appropriate restraint if:
    - (a) The person exercising the restraint is:
      - (1) An employee of a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.; and
      - (2) Acting in his or her official capacity while on duty at a child welfare agency licensed or exempted from licensure under the Child Welfare Agency Licensing Act, § 9-28-401 et seq.;
    - (b) The child welfare agency has policy and procedures regarding restraints;
    - (c) No other alternative exists to control the child except for a restraint;
    - (d) The child is in danger or hurting himself or herself or others;
    - (e) The person exercising the restraint has been trained in properly restraining children, de-escalation, and conflict resolution techniques;
    - (f) The restraint is for a reasonable period of time; and
    - (g) The restraint is in conformity with training and child welfare agency policy and procedures.
  - (iii) Reasonable and moderate physical discipline inflicted by a parent or guardian does not include any act that is likely to cause and which does cause injury more serious than transient pain or minor temporary marks.
  - (iv) The age, size, and condition of the child and the location of the injury and the frequency or recurrence of injuries shall be considered when determining whether the physical discipline is reasonable or moderate;
- (4) "Caretaker" means a parent, guardian, custodian, foster parent, or any person fourteen (14) years of age or older who is entrusted with a child's care by a parent, guardian, custodian, or foster parent, including without limitation, an agent or employee of a public or private residential home, childcare

facility, public or private school, or any person responsible for a child's welfare, but excluding the spouse of a minor;

(5)

(A) "Central intake", otherwise referred to as the "Child Abuse Hotline", means a unit that shall be established by the Department of Human Services for the purpose of receiving and recording notification made pursuant to this chapter.

(B) The Child Abuse Hotline shall be staffed twenty-four (24) hours per day and shall have statewide accessibility through a toll-free telephone number;

(6) "Child" or "juvenile" means an individual who is from birth to eighteen (18) years of age;

(7) "Child maltreatment" means abuse, sexual abuse, neglect, sexual exploitation, or abandonment;

(8) "Department" means the Department of Human Services and the Division of Arkansas State Police;

(9) "Deviate sexual activity" means any act of sexual gratification involving:

(A) Penetration, however slight, of the anus or mouth of one person by the penis of another person; or

(B) Penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person;

(10)

(A)

(i) "Forcible compulsion" means physical force, intimidation, or a threat, express or implied, of physical injury to or death, rape, sexual abuse, or kidnapping of any person.

(ii) If the act was committed against the will of the child, then forcible compulsion has been used.

(B) The age, developmental stage, and stature of the victim and the relationship of the victim to the assailant, as well as the threat of deprivation of affection, rights, and privileges from the victim by the assailant, shall be considered in weighing the sufficiency of the evidence to prove forcible compulsion;

(11) "Guardian" means any person, agency, or institution, as defined by § 28-65-101 et seq., whom a court of competent jurisdiction has so appointed;

(12) "Indecent exposure" means the exposure by a person of the person's sexual organs for the purpose of arousing or gratifying the sexual desire of the person or of any other person under circumstances in which the person knows the conduct is likely to cause affront or alarm;

(13) "Near fatality" means an act that, as certified by a physician, places the child in serious or critical condition;

(14)

(A) "Neglect" means those acts or omissions of a parent, guardian, custodian, foster parent, or any person who is entrusted with the child's care by a parent, custodian, guardian, or foster parent, including, but not limited to, an agent or employee of a public or private residential home, childcare facility, public or private school, or any person legally responsible under state law for the child's welfare, but excluding the spouse of a minor and the parents of the married minor, which constitute:

(i) Failure or refusal to prevent the abuse of the child when the person knows or has reasonable cause to know the child is or has been abused;

(ii) Failure or refusal to provide necessary food, clothing, shelter, or medical treatment necessary for the child's well-being, except when the failure or refusal is caused primarily by the financial inability of the person legally responsible and no services for relief have been offered;

(iii) Failure to take reasonable action to protect the child from abandonment, abuse, sexual abuse, sexual exploitation, or neglect when the existence of the condition was known or should have been known, and, if for abuse or neglect, the failure to take reasonable action to protect the juvenile causes the juvenile serious bodily injury;

(iv) Failure or irremediable inability to provide for the essential and necessary physical, mental, or emotional needs of the child, including the failure to provide a shelter that does not pose a risk to the health or safety of the child;

(v) Failure to provide for the child's care and maintenance, proper or necessary support, or medical, surgical, or other necessary care;

(vi) Failure, although able, to assume responsibility for the care and custody of the child or to participate in a plan to assume such responsibility;

(vii) Failure to appropriately supervise the child that results in the child's being left alone:

(a) At an inappropriate age creating a dangerous situation; or

(b) In inappropriate circumstances creating a dangerous situation;

(viii) Failure to appropriately supervise the child that results in the child's being placed in inappropriate circumstances creating a dangerous situation;

(ix) Failure to ensure a child between six (6) years of age and seventeen (17) years of age is enrolled in school or is being legally homeschooled; or

(x) An act or omission by the parent, custodian, or guardian of the child that results in the child's being habitually and without justification absent from school.

(B)

(i) "Neglect" shall also include:

(a) Causing a child to be born with an illegal substance present in the child's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child; or

(b) At the time of the birth of a child, the presence of an illegal substance in the mother's bodily fluids or bodily substances as a result of the pregnant mother's knowingly using an illegal substance before the birth of the child.

(ii) As used in this subdivision (14)(B), "illegal substance" means a drug that is prohibited to be used or possessed without a prescription under the Arkansas Criminal Code, § 5-1-101 et seq.

(iii) A test of the child's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(a) of this section.

(iv) A test of the mother's bodily fluids or bodily substances may be used as evidence to establish neglect under subdivision (14)(B)(i)(b) of this section;

(15) "Parent" means a biological mother, an adoptive parent, or a man to whom the biological mother was married at the time of conception or birth or who has been found by a court of competent jurisdiction to be the biological father of the child;

(16) "Pornography" means:

(A) Pictures, movies, or videos that lack serious literary, artistic, political, or scientific value and that, when taken as a whole and applying contemporary community standards, would appear to the average person to appeal to the prurient interest;

(B) Material that depicts sexual conduct in a patently offensive manner lacking serious literary, artistic, political, or scientific value; or

(C) Obscene or licentious material;

(17) "Reproductive healthcare facility" means any office, clinic, or any other physical location that provides abortions, abortion counseling, abortion referrals, contraceptives, contraceptive counseling, sex education, or gynecological care and services;

(18) "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty;

(19) "Severe maltreatment" means sexual abuse, sexual exploitation, acts or omissions that may or do result in death, abuse involving the use of a deadly weapon as defined by § 5-1-102, bone fracture, internal injuries, burns, immersions, suffocation, abandonment, medical diagnosis of failure to thrive, or causing a substantial and observable change in the behavior or demeanor of the child;

(20) "Sexual abuse" means:

(A) By a person fourteen (14) years of age or older to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;

(iii) Indecent exposure; or

(iv) Forcing the watching of pornography or live sexual activity;

(B) By a person eighteen (18) years of age or older to a person not his or her spouse who is younger than fifteen (15) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(C) By a person twenty (20) years of age or older to a person not his or her spouse who is younger than sixteen (16) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact; or

(iii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;

(D) By a caretaker to a person younger than eighteen (18) years of age:

(i) Sexual intercourse, deviate sexual activity, or sexual contact;

(ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact;

(iii) Forcing or encouraging the watching of pornography;

(iv) Forcing, permitting, or encouraging the watching of live sexual activity;

(v) Forcing the listening to a phone sex line;

- (vi) An act of voyeurism; or
- (vii) Solicitation of sexual intercourse, deviate sexual activity, or sexual contact;
- (E) By a person younger than fourteen (14) years of age to a person younger than eighteen (18) years of age:
  - (i) Sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion; or
  - (ii) Attempted sexual intercourse, deviate sexual activity, or sexual contact by forcible compulsion;
- (F) By a person eighteen (18) years of age or older to a person who is younger than eighteen (18) years of age, the recruiting, harboring, transporting, obtaining, patronizing, or soliciting of a child for the purpose of a commercial sex act; or
- (G) Grooming, by a:
  - (i) Person eighteen (18) years of age or older to a person not his or her spouse who is younger than fourteen (14) years of age; or
  - (ii) Caretaker to a person younger than fourteen (14) years of age;
- (21)
- (A)
- (i) "Sexual contact" means any act of sexual gratification involving:
  - (a) The touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female;
  - (b) The encouraging of a child to touch the offender in a sexual manner; or
  - (c) The offender requesting to touch a child in a sexual manner.
- (ii) Evidence of sexual gratification may be inferred from the attendant circumstances surrounding the specific complaint of child maltreatment.
- (B) "Sexual contact" does not include normal affectionate hugging;
- (22) "Sexual exploitation" means:
  - (A) The following by a person eighteen (18) years of age or older to a child who is not his or her spouse:
    - (i) Allowing, permitting, or encouraging participation or depiction of the child in:
      - (a) Prostitution;
      - (b) Obscene photography; or
      - (c) Obscene filming; or
    - (ii) Obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose; or
  - (B) The following by a caretaker to a child:
    - (i) Allowing, permitting, or encouraging participation or depiction of the child in:
      - (a) Prostitution;
      - (b) Obscene photography; or
      - (c) Obscene filming; or
    - (ii) Obscenely depicting, obscenely posing, or obscenely posturing the child for any use or purpose;
- (23) "Significant other" means a person:
  - (A) With whom the parent shares a household; or
  - (B) Who has a relationship with the parent that results in the person's acting in loco parentis with respect to the parent's child or children, regardless of living arrangements;
- (24) "Subject of the report" means:
  - (A) The offender;
  - (B) The custodial and noncustodial parents, guardians, and legal custodians of the child who is subject to suspected maltreatment; and
  - (C) The child who is the subject of suspected maltreatment;
- (25) "Underaged juvenile offender" means any child younger than fourteen (14) years of age for whom a report of sexual abuse has been determined to be true for sexual abuse to another child;
- (26) "Voyeurism" means looking, for the purpose of sexual arousal or gratification, into a private location or place in which a child may reasonably be expected to be nude or partially nude;
- (27) "Died suddenly and unexpectedly" means a child death that was not caused by a known disease or illness for which the child was under a physician's care at the time of death, including without limitation a child death as a result of the following:
  - (A) Sudden infant death syndrome;
  - (B) Sudden unexplained infant death;
  - (C) An accident;
  - (D) A suicide;
  - (E) A homicide; or
  - (F) Other undetermined circumstance;



(28)

(A) "Female genital mutilation" means a procedure that involves the partial or total removal of the external female genitalia or any procedure harmful to the female genitalia, including without limitation:

(i) A clitoridectomy;

(ii) The partial or total removal of the clitoris or the prepuce;

(iii) The excision or the partial or total removal of the clitoris and the labia minora, with or without excision of the labia majora;

(iv) The infibulation or the narrowing of the vaginal orifice with the creation of a covering seal by cutting and appositioning the labia minora or the labia majora, with or without excision of the clitoris;

(v) Pricking, piercing, incising, scraping, or cauterizing the genital area; or

(vi) Any other action to purposely alter the structure or function of the female genitalia for a nonmedical reason.

(B) "Female genital mutilation" does not include acts or conduct that otherwise would be considered female genital mutilation if the acts or conduct occur in the furtherance of a surgical or other lawful medical procedure, performed by a licensed medical professional, and:

(i) Is necessary to preserve or protect the physical health of the child upon whom the surgical or other lawful medical procedure was performed; or

(ii) Is part of a sex reassignment procedure as requested by the child who was the patient in the sex reassignment procedure;

(29) "Family member" means a person within the fifth degree of consanguinity by virtue of blood or adoption;

(30) "Fictive kin" means a person who:

(A) Is not related to a child by blood or marriage; and

(B) Has a strong, positive, and emotional tie or role in the:

(i) Life of the child; or

(ii) Life of the parent of the child if the child is an infant;

(31) "Imminent harm" means an act of harm that is a danger:

(A) To the physical, mental, or emotional health of a child;

(B) That is constrained by time; and

(C) That may only be prevented by immediate intervention by a court; and

(32)

(A) "Grooming" means to knowingly disseminate to a child thirteen (13) years of age or younger with or without consideration a visual or print medium depicting sexually explicit content with the purpose to entice, induce, or groom the child to engage in the following with a person:

(i) Sexual intercourse;

(ii) Sexually explicit conduct; or

(iii) Deviate sexual activity.

(B) As used in subdivision (32)(A) of this section, "disseminate" means to allow to view, expose, furnish, present, sell, or otherwise distribute, including on an electronic device or virtual platform, and is not limited to an act that takes place in the physical presence of a child.

(C) It is an affirmative defense to an allegation of grooming that the actor is not more than three (3) years older than the victim.

## History

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Acts 2009, No. 749, § 1; 2011, No. 779, §§ 15-17; 2011, No. 1143, §§ 2-5; 2013, No. 725, §§ 2-4; 2013, No. 1006, §§ 1-6; 2015, No. 1004, § 1; 2015, No. 1026, §§ 1, 2; 2015, No. 1092, § 4; 2015, No. 1211, § 1; 2017, No. 209, §§ 6, 7; 2017, No. 250, § 10; 2019, No. 554, § 2; 2019, No. 556, §§ 2, 3; 2019, No. 881, § 1; 2019, No. 927, § 2; 2023, No. 364, §§ 5-7.

# A.C.A. § 15-43-205

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 15 Natural Resources and Economic Development](#)
- [Subtitle 4. Wildlife Resources](#)
- [Chapter 43 Hunting And Fishing Regulations](#)
- [Subchapter 2 — Hunting](#)

### 15-43-205. Negligent discharge of firearms while hunting deer.

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(a) The General Assembly has become aware of the fact that many persons hunting deer in this state negligently allow their firearms to be discharged without exercising proper care to ascertain the object at which they shoot, thereby endangering the life, limb, and property of other persons. It is the intent of this section to deter the negligent use of firearms by deer hunters by imposing penalties therefor.

(b) A person who, while hunting deer, negligently discharges a firearm in such circumstances as to endanger the person or property of another shall be fined in an amount not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or may be imprisoned in the county jail for a period not less than thirty (30) days nor more than six (6) months, or be both fined and imprisoned.

### History

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Acts 1965, No. 412, §§ 1, 2; A.S.A. 1947, §§ 47-535, 47-535n.

# A.C.A. § 16-43-1001

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 4. Evidence And Witnesses](#)
- [Chapter 43 Witnesses Generally](#)
- [Subchapter 10 — Minors](#)

### 16-43-1001. Closed-circuit television and remote testimony.

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(a)

(1) In any criminal proceeding, on motion of the prosecutor after notice to the defendant or on motion of the defense attorney, the court may, upon a showing of clear and convincing evidence that testifying in open court would be harmful or detrimental to the child, order that the testimony of a victim or witness who is a child twelve (12) years of age or under be taken outside the courtroom and the presence of the defendant and communicated to the courtroom by closed-circuit television, video conference technology, or other technology that would enable the child to testify comfortably.

(2) Any such motion shall only apply to the witnesses of the moving party and shall be filed no later than five (5) days before the trial is scheduled to begin, except in cases where, while testifying, it becomes apparent that the child cannot continue with his or her testimony.

(b) In ruling on the motion, the court shall consider the following factors:

- (1) The age and maturity of the child;
- (2) The possible effect that testimony in person may have on the child;
- (3) The extent of the trauma the child has already suffered;
- (4) The nature of the testimony to be given by the child;
- (5) The nature of the offense, including, but not limited to, the use of a firearm or any other deadly weapon during the commission of the crime or the infliction of serious bodily injury upon the victim during the commission of the crime;

(6)

(A) Threats made to the child or the child's family in order to prevent or dissuade the child from attending or giving testimony at any trial or court proceeding or to prevent the child from reporting the alleged offense or from assisting in criminal prosecution.

(B) Threats under this subdivision (b)(6) may include, but not be limited to, threats of serious bodily injury to be inflicted on the child or a family member, threats of incarceration or deportation of the child or a family member, or threats of removal of the child from the family or dissolution of the family;

(7) Conduct on the part of the defendant or the defendant's attorney which causes the child to be unable to continue his or her testimony; and

(8) Any other matter which the court considers relevant.

(c)

(1)

(A) If the court orders that the child's testimony be taken by closed-circuit television, video conference technology, or other technology that would enable the child to testify comfortably, the testimony shall be taken outside the courtroom in the judge's chambers or in another suitable location designated by the judge.

(B) Examination and cross-examination of the child shall proceed as though he or she were testifying in the courtroom.

(C) The only persons who may be permitted in the room with the child during the child's testimony are:

- (i) The judge or a judicial officer appointed by the court;
- (ii) The prosecutor;
- (iii) The defense attorney, except a pro se defendant;

- (iv) The child's attorney;
  - (v) Persons necessary to operate the closed-circuit television equipment; and
  - (vi) Any person whose presence is determined by the court to be necessary to the welfare and well-being of the child.
- (2) The defendant shall be afforded a means of private, contemporaneous communication with the defendant's attorney during the testimony.
- (d) This section does not preclude the presence of both the victim and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.
- (e) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense, in which case only the court-appointed attorney shall be permitted in the room with the child during the child's testimony.
- (f) This section does not create a right of a child witness to a closed-circuit television, video conference technology, or other technology that would enable the child to testify comfortably in lieu of testifying in open court and the intent of this section is that testimony by closed-circuit television, video conference technology, or other technology that would enable the child to testify comfortably be used in limited circumstances.
- (g) Videotapes of a child's testimony taken under this section that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the alleged victim.

## History

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Acts 1997, No. 1186, § 1; 2021, No. 1026, § 1.

# A.C.A. § 16-84-117

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 84 Bail Generally](#)
- [Subchapter 1 — General Provisions](#)

### 16-84-117. Conditions for release on bail for persons accused of human trafficking and related offenses.

- 
- (a) As used in this section, "offense that involves the taking of a minor or holding a minor without consent" does not mean an offense under § 5-26-501 et seq.
- (b) Unless waived by the court under subsection (c) of this section, a person arrested for a violation of trafficking of persons, § 5-18-103, kidnapping, § 5-11-102, or false imprisonment in the first degree, § 5-11-103, or an offense that involves the taking of a minor or holding a minor without consent, shall not be granted bail before the person agrees to the following conditions imposed by the arraigning court:
- (1) An ankle monitor or GPS-enabled tracking device;
  - (2) Restricted movement limited to the person's residence, except in the case of a medical emergency;
  - (3) A restriction on internet access and access to electronic media;
  - (4) An agreement by the person to:
    - (A) A no contact order prohibiting direct or indirect contact with the victim or victims of the charged offense;
    - (B) Relinquish all firearms to a third party until the expiration of the no contact order; and
    - (C) Refrain from using an illegal controlled substance;
  - (5) A cash bond or a secured bond requiring the person to put up at least fifty percent (50%) of the principal bond amount, at the discretion of the court;
  - (6) Maintaining regular reporting requirements, at the discretion of the court; and
  - (7) Obeying a curfew, at the court's discretion.
- (c) The court may waive a condition under subsection (b) of this section upon a showing that the waiver would not result in an increased risk to the community or an increased risk of flight by the person.
- (d) Absent a waiver by the court under subsection (c) of this section, a person who refuses or fails to agree to or adhere to a condition listed under subsection (b) of this section shall not be allowed release on bail until the conclusion of his or her case.

### History

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Acts 2021, No. 798, § 1; 2023, No. 177, § 11.

# A.C.A. § 16-85-714

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 85 Pretrial Proceedings](#)
- [Subchapter 7 — Arraignment and Pleading Generally](#)

### 16-84-714. No contact orders — Definitions.

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(a) As used in this section:

(1) "Court" means a judge or judicial officer; and

(2) "No contact order" means an order issued by a court to a defendant at or after his or her first appearance on charges as described under Rule 8.1 of the Arkansas Rules of Criminal Procedure that prohibits the defendant from contacting directly or indirectly a person in any manner or from being within a certain distance of the person's home or place of employment.

(b)

(1) A court may issue a no contact order under this section in addition to any other condition of release from custody that is imposed by the court if:

(A) The defendant is charged with one (1) or more of the following offenses:

(i) Terroristic threatening, § 5-13-301;

(ii) Trafficking of persons, § 5-18-103; or

(iii) False imprisonment in the first degree, § 5-11-103; or

(B) It appears that there exists a danger that a defendant will:

(i) Commit a serious crime; or

(ii) Seek to intimidate a witness; or

(iii) Otherwise unlawfully interfere with the orderly administration of justice.

(2) The no contact order issued under this section shall be in effect until it is modified or terminated by the court.

(3) A no contact order issued under this section may contain, without limitation, the following:

(A) The reasons the court issued the no contact order in specific terms and description in reasonable detail of the purpose of the order;

(B)

(i) A prohibition against the defendant's approaching or communicating with a particular person or class of persons, either through a third party or by telephone, electronic communication, or in writing.

(ii) A no contact order issued under this section shall not be deemed to prohibit any lawful or ethical activity of defendant's counsel;

(C) A prohibition against the defendant's going to certain described geographical areas or premises, including an imposition of a restriction that the defendant stay at least one thousand five hundred feet (1,500') from a person's location;

(D) A prohibition against the defendant's possessing a dangerous weapon or engaging in certain described activities, including the ingestion of alcohol or certain drugs; and

(E) A requirement that the defendant report regularly to and remain under the supervision of an officer of the court.

(4) When a no contact order is issued under this section, the court shall inform the defendant of the penalties for failure to comply with the conditions or terms of the order.

(5) All terms of a no contact order issued under this section shall be reduced to writing, and a copy shall be given to the defendant.

(6)

(A) If a defendant violates a no contact order issued under this section, the court shall issue a warrant directing that the defendant be arrested and immediately taken before any court having jurisdiction.

(B) The court shall then have authority to detain the defendant for a period of time not to exceed twenty-four (24) hours, unless the violation occurs on a Friday or a holiday, in which case the time period shall be forty-eight (48) hours, during which time the prosecuting attorney shall file a petition to revoke the defendant's appearance bond or modify the conditions of the defendant's release, alleging the following:

(i) That the defendant has knowingly violated the terms of a no contact order issued under this section;

(ii) That relevant information has become known to the prosecuting attorney warranting the modification of or revocation of the defendant's appearance bond; and

(iii) That a law enforcement officer had reasonable grounds to believe that the defendant violated the terms of a no contact order issued under this section and that it was impracticable to secure an arrest warrant at the time of arrest.

(C)

(i) The defendant shall be entitled to a hearing on the petition to modify or revoke the defendant's appearance bond within forty-eight (48) hours of the defendant's appearance before the court, unless the violation occurs on a Friday or a holiday, in which case the hearing shall be within seventy-two (72) hours.

(ii) If after a hearing the court finds that the defendant knowingly violated the terms of a no contact order issued under this section, the court may impose different or additional conditions of release or revoke his or her appearance bond.

(c)

(1) A court may set the duration of a no contact order issued under this section for an additional period of time after the adjudication of the offense for which the defendant was originally charged if it determines the additional period of time is necessary to protect the safety of a person, persons residing with the person, or members of the person's immediate family.

(2) The duration or extension of the no contact order shall not be for more than one (1) year from the date of issuance or, if the original charge is adjudicated with a finding of the defendant's guilt, from the date of sentencing.

(d) Upon conviction, violation of a no contact order issued under this section is a Class A misdemeanor.

## History

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Acts 2011, No. 589, § 1; 2019, No. 1037, § 1; 2021, No. 799, § 1; 2023, No. 177, § 12.

# A.C.A. § 16-87-212

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 87 Public Defenders](#)
- [Subchapter 2 — Arkansas Public Defender Commission](#)

### 16-87-212. Court fees and expenses.

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(a)

(1) The Arkansas Public Defender Commission is authorized to pay for certain expenses regarding the defense of indigents.

(2)

(A) The expenses shall include, but shall not necessarily be limited to, fees for counsel appointed by the court, expert witnesses, temporary investigators, testing, and travel.

(B)

(i) Expenses shall not include attorney's fees for counsel privately retained for the benefit of an indigent defendant for that defendant's defense.

(ii) The commission may authorize the payment of expenses of counsel privately retained for the benefit of an indigent defendant, provided counsel complies with the standards set by the commission under this subchapter governing counsel appointed by the court or employed or contracted by the commission.

(3)

(A) Whenever a judge orders an authorized payment in a case involving an indigent person, a copy of the order accompanied by a detailed explanation of services rendered, time spent, and expenses incurred shall be transmitted to the commission, and the commission shall set the amount of compensation.

(B) Orders as authorized throughout this chapter shall be paid by the commission provided sufficient funds are available.

(b)

(1) With the approval of the Executive Director of the Arkansas Public Defender Commission, trial public defenders, appointed private attorneys, and the Capital, Conflicts, and Appellate Office are authorized to utilize the services of the State Crime Laboratory for pathology and biology, toxicology, criminalistics, raw drug analysis, latent fingerprint identification, questioned documents examination, firearms and toolmarks identification, and in other such areas as the trial judge may deem necessary and appropriate.

(2) If approved by the executive director, the laboratory shall provide the requested services.

(c) At the discretion of the commission, capital murder cases and all proceedings under the Arkansas Rules of Criminal Procedure, Rule 37.5, shall be paid entirely by the commission.

### History

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Acts 1993, No. 1193, § 10; 1997, No. 788, § 22; No. 1341, § 22; 2001, No. 1343, § 2; 2001, No. 1799, § 6; 2011, No. 39, § 1.



# A.C.A. § 16-90-119

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 1 — General Provisions](#)

### 16-90-119. Confiscation of deadly weapons.

(a) When any person is convicted of any homicide, burglary, robbery, assault with intent to kill, assault with a deadly weapon, battery, or any other felony involving a deadly weapon, the court in which the person is convicted may confiscate the deadly weapons involved in the offense and may by court order either:

- (1) Transfer the weapons and the title to the weapons to an appropriate state or local law enforcement agency for use or sale by the law enforcement agency; or
- (2) Order the weapons destroyed if the weapons are not suitable for use or sale by law enforcement agencies.

(b)

- (1) The sale of weapons by a law enforcement agency under this section shall be at a public auction or by competitive bid.
- (2) The sale shall be subject to a background check of the purchaser through the Federal Bureau of Investigation's National Instant Criminal Background Check System.
- (3) The sale shall not include illegal weapons.
- (4) The proceeds of the auction shall be retained by the law enforcement agency.

### History

Acts 1953, No. 267, § 1; A.S.A. 1947, § 43-2327; Acts 1987, No. 712, § 1; 2005, No. 889, § 1.

# A.C.A. § 16-90-120

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 1 — General Provisions](#)

### **16-90-120. Felony with firearm. [Effective until January 1, 2024.]**

(a) Any person convicted of any offense that is classified by the laws of this state as a felony who employed any firearm of any character as a means of committing or escaping from the felony, in the discretion of the sentencing court, may be subjected to an additional period of confinement in the Division of Correction for a period not to exceed fifteen (15) years.

(b) The period of confinement, if any, imposed under this section shall be in addition to any fine or penalty provided by law as punishment for the felony itself. Any additional prison sentence imposed under the provisions of this section, if any, shall run consecutively and not concurrently with any period of confinement imposed for conviction of the felony itself.

(c) A separate appeal may be taken to the Supreme Court from the imposition of the sentence, if any, provided for by this section, and any appeal shall be in the manner prescribed for appellate review of conviction of criminal offenses in general. However, the sole and only question to be decided upon the separate appeal shall be whether the evidence warrants a finding that the defendant actually employed a firearm in the commission of, or escape from commission of, the felony for which he or she stands convicted.

(d) Any reversal of a defendant's conviction for the commission of the felony shall automatically reverse the prison sentence which may be imposed under this section.

(e)

(1) For an offense committed on or after July 2, 2007, notwithstanding any law allowing the award of meritorious good time or any other law to the contrary, except as provided in subdivision (e)(1)(B)(ii) of this section, any person who is sentenced under subsection (a) of this section is not eligible for parole or community correction transfer until the person serves:

(A) Seventy percent (70%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section if the underlying felony was any of the following:

(i) Murder in the first degree, § 5-10-102;

(ii) Kidnapping that is a Class Y felony, § 5-11-102;

(iii) Aggravated robbery, § 5-12-103;

(iv) Rape, § 5-14-103;

(v) Causing a catastrophe, § 5-38-202(a);

(vi) Trafficking methamphetamine, § 5-64-440(b)(1);

(vii) Manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401; or

(viii) Possession of drug paraphernalia with the purpose to manufacture methamphetamine, former § 5-64-403(c)(5);

(B)

(i) Except as provided in subdivision (e)(1)(B)(ii) of this section, seventy percent (70%) of the term of imprisonment to which the person is sentenced under subsection (a) of this section if the underlying felony was any of the following:

(a) Manufacturing methamphetamine, § 5-64-423(a) or former § 5-64-401;

(b) Possession of drug paraphernalia with the intent to manufacture methamphetamine, former § 5-64-403(c)(5); or

(c) Trafficking methamphetamine, § 5-64-440(b)(1).

(ii) The person is eligible for parole or community correction transfer if the person serves at least fifty percent (50%) of the term of imprisonment to which the person is sentenced under subsection (a) of

this section for the offenses listed in subdivision (e)(1)(B)(i) of this section with credit for the award of meritorious good time under § 12-29-201 unless the person is sentenced to a term of life imprisonment. The time served by any person under this subdivision (e)(1)(B)(ii) shall not be reduced to less than fifty percent (50%) of the person's original sentence under subsection (a) of this section; or

(C) Either one-third ( $\frac{1}{3}$ ) or one-half ( $\frac{1}{2}$ ) of the term of imprisonment to which the person is sentenced under subsection (a) of this section with credit for meritorious good time and depending on the seriousness determination made by the Arkansas Sentencing Commission if the underlying felony was any felony not listed in subdivision (e)(1)(A) or subdivision (e)(1)(B) of this section.

(2) The sentencing court may waive subdivision (e)(1) of this section if all of the following circumstances exist:

(A) The defendant was a juvenile when the offense was committed;

(B) The defendant was merely an accomplice to the offense; and

(C) The offense was committed on or after July 31, 2007.

(f) A person who commits the offense of possession of drug paraphernalia with the purpose to manufacture methamphetamine, § 5-64-443, after July 27, 2011, shall not be subject to the provisions of this section.

## History

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Acts 1969, No. 78, §§ 1-3; 1973, No. 61, § 1; A.S.A. 1947, §§ 43-2336 — 43-2338; Acts 2007, No. 1047, § 5; 2011, No. 570, § 76; 2019, No. 910, § 861.

# A.C.A. § 16-90-121

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 1 — General Provisions](#)

**16-90-121.** Second or subsequent felony with firearm. [Effective until January 1, 2024.]

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Any person who is found guilty of or pleads guilty or nolo contendere to a second or subsequent felony involving the use of a firearm shall be sentenced to a minimum term of imprisonment of ten (10) years in the Division of Correction without eligibility of parole or community correction transfer but subject to reduction by meritorious good-time credit.

## History

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Acts 1981, No. 583, § 1; A.S.A. 1947, § 43-2336.1; Acts 2001, No. 1783, § 1; 2019, No. 910, § 862.

# A.C.A. § 16-90-804

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 8 — Sentencing Guidelines](#)

### **16-90-804. Departures from the voluntary presumptive sentence range.**

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(a)

(1) At a bench trial, a court may depart from the voluntary presumptive sentence range determined under § 16-90-803 in reliance on one (1) or more aggravating factors by providing a justification in the record of:

(A) A listing of the charges and sentencing enhancements against the offender as set out in the first charging instrument as well as any additional charges or sentence enhancements subsequently added in the case, if any; and

(B) A thorough recitation of the facts underlying the departure from the voluntary presumptive sentence range under § 16-90-803.

(2)

(A) The justification regarding an aggravating factor shall be entered into the sentencing order.

(B) The sentencing order shall also reflect whether the sentence is the result of an original charge or whether an original charge was nolle prosequi.

(b)

(1)

(A) When sentencing is done by the court following a trial before the court, either party or both parties may present evidence to justify a departure from the voluntary presumptive sentence range determined under § 16-90-803.

(B) The court may allow argument either during the sentencing phase of a trial or at a separate hearing on the matter of departing from the voluntary presumptive sentence range determined under § 16-90-803 if the court finds that argument would be helpful.

(C)

(i) When sentencing is done by the court following the entry of a plea of guilty, nolo contendere, or a negotiated plea of guilty, the court shall enter the sentence on the record.

(ii) After the court enters the sentence on the record under subdivision (b)(1)(C)(i) of this section, the prosecuting attorney shall provide in writing the credible reasons for a departure from the voluntary presumptive sentence range, if a departure from the voluntary presumptive sentence range is applicable.

(2)

(A) If both parties agree on a recommended sentence, the court may choose to accept or reject the agreement based upon the facts of the case and whether the facts support the voluntary presumptive sentence range determined under § 16-90-803 or a departure different from any recommendation.

(B)

(i) If there is an agreed departure from the voluntary presumptive sentence range under § 16-90-803, the parties shall supply written reasons to the court to attach to the sentencing order and to report to the Arkansas Sentencing Commission.

(ii) The written reasons required under subdivision (b)(2)(B)(i) of this section shall include:

(a) A listing of the charges and sentencing enhancements against the offender as they were set out in the first charging instrument as well as any additional charges or sentence enhancements subsequently added in the case, if any; and

(b) A thorough recitation of the facts underlying the departure from the presumptive sentence range under § 16-90-803.

(C) If the court rejects the agreement under subdivision (b)(2)(A) of this section, the offender shall be allowed to withdraw his or her plea.

(c) The following is a nonexclusive list of mitigating factors that may be considered as a reason or reasons for departure from the voluntary presumptive sentence range under § 16-90-803:

(1) While falling short of a defense, the victim played an aggressive role in the incident or provoked or willingly participated in the incident;

(2) The offender played a minor or passive role in the commission of the current offense;

(3) Before detection, the offender compensated or made a good faith effort to compensate the victim for any damage or injury sustained by the victim;

(4) The current offense was principally accomplished by another person, and the offender manifested extreme caution or sincere concern for the safety or well-being of the victim;

(5) The offender or the offender's children suffered a continuing pattern of physical or sexual abuse by the victim of the current offense, and the current offense is a response to the physical or sexual abuse;

(6) The inclusion of multiple offenses in calculating the voluntary presumptive sentence range under § 16-90-803 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter;

(7) If the current offense is a sexual offense, before detection in the sexual offense, the offender has voluntarily admitted the nature and extent of the sexual offense and has sought and participated in professional treatment or counseling for the sexual offense;

(8) Upon motion of the state stating that the offender has made a good faith effort to provide substantial assistance to the investigation or prosecution of another person who has committed an offense, the circumstances listed below may be weighed as mitigating factors with respect to the offender's offense:

(A) The timeliness of the offender's assistance;

(B) The nature and extent of the offender's assistance; and

(C) The truthfulness, completeness, and demonstrable reliability of any information or testimony provided by the offender; and

(9)

(A) Any other compelling reason.

(B) If any other compelling reason is used as a mitigating factor under this subsection, additional details regarding the negotiated plea, if applicable, and why the sentence was a downward departure from the voluntary presumptive sentence shall be included.

(d) The following is a nonexclusive list of aggravating factors that may be considered as a reason or reasons for departure from the voluntary presumptive sentence range determined under § 16-90-803:

(1) The offender's conduct during the commission of the current offense manifested deliberate cruelty to the victim exhibited by degrading, gratuitous, vicious, torturous, and demeaning physical or verbal abuse, unusual pain, or violence in excess of that necessary to accomplish the criminal purpose;

(2) The offender knew or reasonably should have known that the victim was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health;

(3) The current offense was a major economic offense or series of offenses, as identified by a consideration of any of the following factors:

(A) The current offense involved multiple victims or multiple incidents per victim;

(B) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(C) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;

(D)

(i) The offender used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(ii) The factor described under subdivision (d)(3)(D)(i) of this section does not apply if it constitutes an element of the current offense; or

(E) The offender has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions;

(4)

(A) The current offense was a major controlled substance offense, identified as an offense or series of offenses related to trafficking in controlled substances under circumstances more onerous than the usual controlled substance offense.

**(B)** The presence of two (2) or more of the following circumstances is an aggravating factor with respect to the current offense:

- (i)** The current offense involved at least three (3) separate transactions in which controlled substances were sold, transferred, or possessed with a purpose to sell or transfer the controlled substance;
- (ii)** The current offense involved an attempted or actual sale or transfer of a controlled substance in an amount substantially larger than the statutory minimum that defines the current offense;
- (iii)** The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time or involved a broad geographic area of disbursement;
- (iv)** The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;
- (v)** The offender used his or her position or status to facilitate the commission of the current offense, including without limitation positions of trust, confidence, or fiduciary relationships, such as a pharmacist, physician, or other medical professional; or
- (vi)** The offender has received substantial income or resources from his or her involvement in trafficking a controlled substance;

**(5)**

**(A)** The current offense is a felony and the offender employed a firearm in the course of or in furtherance of the felony or in immediate flight from the felony.

**(B)** The factor described under subdivision (d)(5)(A) of this section does not apply to an offender convicted of a felony, an element of which is:

- (i)** Employing or using, or threatening or attempting to employ or use, a deadly weapon;
- (ii)** Being armed with a deadly weapon;
- (iii)** Possessing a deadly weapon;
- (iv)** Furnishing a deadly weapon; or
- (v)** Carrying a deadly weapon;

**(6)** The current offense was a sexual offense and was part of a pattern of criminal behavior with the same or different victims under eighteen (18) years of age manifested by multiple incidents over a prolonged period of time;

**(7)** The inclusion of multiple offenses in calculating the voluntary presumptive sentence range under § 16-90-803 results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter;

**(8)** The current offense was committed in a manner that exposed risk of injury to persons other than the victim or victims, including without limitation shooting a firearm into a crowd of people;

**(9)** The current offense was a violent or sexual offense committed in the victim's zone of privacy, including without limitation the victim's home or the curtilage of the victim's home;

**(10)** The offender attempted to cover or conceal the current offense by intimidation of witnesses, destruction or tampering with evidence, or purposely misleading authorities;

**(11)** The current offense was committed for the purpose of avoiding or preventing an arrest or effecting an escape from custody;

**(12)** If the current offense is related to a vehicular homicide, the offender did not have the minimum insurance required by law; and

**(13)**

**(A)** Any other compelling reason.

**(B)** If any other compelling reason is used as an aggravating factor under this subsection, additional details regarding the negotiated plea, if applicable, and why the sentence was an upward departure from the voluntary presumptive sentence shall be included.

**(e)** This section shall not apply when a jury has recommended a sentence to the trial court.

## History

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Acts 1993, No. 532, § 3; 1993, No. 550, § 3; 1995, No. 1170, §§ 8, 9; 2005, No. 186, § 1; 2017, No. 423, § 15; 2023, No. 736, § 13.

# A.C.A. § 16-90-1101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 11 — Rights of Victims of Crime](#)

## 16-90-1101. Definitions.

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As used in this subchapter:

- (1) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which is punishable by incarceration if committed by a competent adult;
- (2) "Member of the victim's family" means the spouse, a child by birth or adoption, a stepchild, a parent, a stepparent, a sibling, or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan;
- (3) "Offense against a victim who is a minor" means:
  - (A) Kidnapping pursuant to § 5-11-102(a)(4) when the victim is a minor and the offender is not the parent of the victim;
  - (B) False imprisonment in the first degree pursuant to § 5-11-103 when the victim is a minor and the offender is not the parent of the victim;
  - (C) Permanent detention or restraint pursuant to § 5-11-106 when the victim is a minor and the offender is not the parent of the victim;
  - (D) Any sex offense when the victim is a minor;
  - (E) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (3);
  - (F) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (3); or
  - (G) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (3);
- (4) "Person" means an individual, corporation, estate, trust, partnership, association, joint venture, governmental entity, agency, or instrumentality, or any other legal entity;
- (5) "Representative of the victim" means a member of the victim's family or an individual designated by the victim or by a court in which the crime is being or could be prosecuted;
- (6) "Sex offense" means:
  - (A) Rape, § 5-14-103;
  - (B) Sexual indecency with a child, § 5-14-110, if the offense is a felony;
  - (C) Sexual assault in the first degree, § 5-14-124;
  - (D) Sexual assault in the second degree, § 5-14-125;
  - (E) Sexual assault in the third degree, § 5-14-126;
  - (F) Sexual assault in the fourth degree, § 5-14-127;
  - (G) Incest, § 5-26-202;
  - (H) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;
  - (I) Transportation of minors for prohibited sexual conduct, § 5-27-305;
  - (J) Employing or consenting to use of a child in sexual performance, § 5-27-402;
  - (K) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
  - (L) Possession or use of child sexual abuse material, § 5-27-603;
  - (M) Computer exploitation of a child in the first degree, § 5-27-605(a);
  - (N) Promoting prostitution in the first degree, § 5-70-104;
  - (O) Stalking, § 5-71-229;



- (P) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in this subdivision (6);
- (Q) An adjudication of guilt for an offense of the law of another state, for a federal offense, or for a military offense, which is substantially equivalent to any of the offenses enumerated in this subdivision (6);
- (R) A violation of any former law of this state that is substantially equivalent to any of the offenses enumerated in this subdivision (6); or
- (S) Sexual extortion, § 5-14-113;
- (7) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States;
- (8) "Victim" means a victim of a sex offense or an offense against a victim who is a minor and a victim of any violent crime, but does not include a person who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan and does not include a governmental entity; and
- (9) "Violent crime" means any felony or Class A misdemeanor which resulted in physical injury to the victim, any felony or Class A misdemeanor involving the use of a deadly weapon, terroristic threatening in the first degree, § 5-13-301(a), and stalking, as defined in § 5-71-229.

## History

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Acts 1997, No. 1262, § 1; 2003, No. 1087, § 13; 2003, No. 1390, § 8; 2017, No. 664, § 8; 2023, No. 21, § 9; 2023, No. 415, § 1; 2023, No. 619, § 18.

# A.C.A. § 16-90-1417

## Copy Citation

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- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 14 — Comprehensive Criminal Record Sealing Act of 2013](#)

## 16-90-1417. Effect of sealing.

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(a)

(1) A person whose record has been sealed under this subchapter shall have all privileges and rights restored, and the record that has been sealed shall not affect any of his or her civil rights or liberties unless otherwise specifically provided by law.

(2) A person who wants to reacquire the right to vote removed from him or her as the result of a felony conviction must follow the procedures in Arkansas Constitution, Amendment 51, § 11.

(3) The effect of this subchapter does not reconfer the right to carry a firearm if that right was removed as the result of a felony conviction.

(b)

(1) Upon the entry of the uniform order, the person's underlying conduct shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist.

(2) This subchapter does not prevent the use of the record of a prior conviction otherwise sealed under this subchapter for the following purposes:

(A) A criminal proceeding for any purpose not otherwise prohibited by law;

(B) Determination of offender status under the former § 5-64-413;

(C) Habitual offender status, § 5-4-501 et seq.;

(D) Impeachment upon cross-examination as dictated by the Arkansas Rules of Evidence;

(E) Healthcare professional licensure by a state agency or board;

(F) Any disclosure mandated by Rule 17, 18, or 19 of the Arkansas Rules of Criminal Procedure; or

(G) Determination of certification, eligibility for certification, or of the ability to act as a law enforcement officer, by the Arkansas Commission on Law Enforcement Standards and Training.

## History

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Acts 2013, No. 1460, § 9; 2017, No. 139, § 2; 2019, No. 151, § 12.

# A.C.A. § 16-93-303

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 3 — Probation and Suspended Imposition of Sentence](#)

### 16-93-303. Probation — First time offenders — Procedure.

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(a)

(1)

(A)

(i) When an accused enters a plea of guilty or nolo contendere prior to an adjudication of guilt, the circuit court or district court, in the case of a defendant who previously has not been convicted of a felony, without making a finding of guilt or entering a judgment of guilt and with the consent of the defendant, may defer further proceedings and place the defendant on probation for a period of not less than one (1) year, under such terms and conditions as may be set by the circuit court or district court.

(ii) A sentence of a fine not exceeding three thousand five hundred dollars (\$3,500) or an assessment of court costs against a defendant does not negate the benefits provided by this section or cause the probation placed on the defendant under this section to constitute a conviction except under subsections (c)-(e) of this section.

(B) However, a person who is found guilty of or pleads guilty or nolo contendere to one (1) or more of the following offenses is not eligible for sealing of the record under this subchapter:

(i) An offense that requires the person to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(ii) Public sexual indecency, § 5-14-111;

(iii) Indecent exposure, § 5-14-112;

(iv) Bestiality, § 5-14-122;

(v) Exposing another person to the human immunodeficiency virus, § 5-14-123; or

(vi) A serious felony involving violence or a felony involving violence as provided in § 5-4-501.

(2) Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(3) This subsection does not require or compel any court of this state to establish first offender procedures as provided in this section and §§ 16-93-301 and 16-93-302.

(b) Upon fulfillment of the terms and conditions of probation or upon release by the court prior to the termination period thereof, the defendant shall be discharged without court adjudication of guilt, whereupon the court shall enter an appropriate order that shall effectively dismiss the case, discharge the defendant, and seal the record, if consistent with the procedures established in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) During the period of probation described in subdivision (a)(1)(A)(i) of this section, a defendant is considered as not having a felony conviction except for:

(1) Application of any law prohibiting possession of a firearm by certain persons;

(2) A determination of habitual offender status;

(3) A determination of criminal history;

(4) A determination of criminal history scores;

(5) Sentencing; and

(6) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.

(d) After successful completion of probation placed on the defendant under this section, a defendant is considered as not having a felony conviction except for:

(1) A determination of habitual offender status;

- (2) A determination of criminal history;
- (3) A determination of criminal history scores;
- (4) Sentencing; and
- (5) A purpose of impeachment as a witness under Rule 609 of the Arkansas Rules of Evidence.
- (e) The eligibility to possess a firearm of a person whose record has been sealed under this subchapter and the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq., is governed by § 5-73-103.
- (f) A court as a condition of probation shall order the defendant to:
  - (1)
    - (A)
      - (i) Enroll in and complete a vocational, technical, educational, or similar program if the court finds that the defendant's lack of an employable or marketable skill contributes to the defendant's being unemployed.
      - (ii) The court may order the person to pay tuition for any vocational, technical, educational, or similar program in installments after the completion of the education or training program.
    - (B) If the defendant is on probation at the end of the vocational, technical, educational, or similar program required under subdivision (f)(1)(A) of this section, he or she shall be required to work in suitable employment for the remainder of his or her probation or for three (3) years, whichever occurs earlier; or
  - (2) Work consistently in suitable employment for the entire duration of his or her probation or for three (3) years, whichever occurs earlier.

## History

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Acts 1975, No. 346, §§ 2, 3; A.S.A. 1947, §§ 43-1232, 43-1233; Acts 1995, No. 998, § 9; 1999, No. 1407, § 1; 2003, No. 1185, § 219; 2003, No. 1753, § 2; 2007, No. 744, § 2; 2011, No. 570, § 90; 2011, No. 1233, § 1; 2013, No. 1460, § 11; 2015, No. 1198, § 8; 2017, No. 662, § 1; 2019, No. 385, § 1.

# A.C.A. § 16-93-601

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 6 — Parole — Eligibility](#)

### **16-93-601.** Felonies committed prior to April 1, 1977. [Effective January 1, 2024.]

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(a) **Death Sentence.** An individual under sentence of death is not eligible for release on parole or post-release supervision.

(b) **Life Imprisonment.**

(1) An individual sentenced to life imprisonment prior to March 1, 1968, and any individual sentenced to life imprisonment after February 12, 1969, and before April 1, 1977, is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. When the life sentence is commuted to a term of years, the individual is eligible for release on parole after having served one-third ( $\frac{1}{3}$ ) of the time to which the life sentence is commuted, with credit for good-time allowances.

(2) An individual sentenced to life imprisonment on and after March 1, 1968, and prior to February 12, 1969, is eligible for release on parole after he or she serves fifteen (15) years of the sentence, with credit for good-time allowances not to exceed five (5) years.

(c) **Sentence of Years.** An individual sentenced to a term of years in the Department of Correction or the Division of Correction after February 11, 1976, and before April 1, 1977, is eligible for release on parole after he or she serves the following terms:

(1) An individual sentenced to a term of years for other than a Class Y felony who is confined in the department or division for the second time is eligible for release on parole after he or she serves one-third ( $\frac{1}{3}$ ) of the time for which sentenced, with credit for good-time allowances, or one-third ( $\frac{1}{3}$ ) of the time to which sentence is commuted by executive clemency, with credit for good-time allowances. However, a judge may require one-half ( $\frac{1}{2}$ ) of the sentence as imposed, or one-half ( $\frac{1}{2}$ ) of the sentence as commuted by executive clemency, to be served, with credit for good-time allowances; and

(2) An individual sentenced to a term of years who is confined in the department or division and who pleads guilty to or is convicted of a Class Y felony or who has previously been confined in the department or division two (2) or more times is eligible for release on parole after he or she serves one-half ( $\frac{1}{2}$ ) of the time to which the sentence is commuted by executive clemency, with credit for good-time allowances.

(d) Notwithstanding the provisions of subsections (a)-(c) of this section, the court may require anyone convicted of a crime involving the use of a deadly weapon to serve one-half ( $\frac{1}{2}$ ) of the time for which sentenced, with credit for good-time allowances.

## History

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Acts 1968 (1st Ex. Sess.), No. 50, § 28; 1969, No. 48, § 1; 1969, No. 94, § 1; 1975, No. 378, § 6; 1975 (Extended Sess., 1976), No. 1157, § 1; 1975 (Extended Sess., 1976), No. 1161, § 1; 1981, No. 620, § 15; A.S.A. 1947, § 43-2807; reen. Acts 1987, No. 990, § 1; 2019, No. 910, § 908; 2023, No. 659, § 184.

# A.C.A. § 16-93-604

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 6 — Parole — Eligibility](#)

### 16-93-604. Felonies committed between April 1, 1977, and April 1, 1983 — Parole eligibility.

(a) A person who committed felonies prior to April 1, 1977, and who was convicted and incarcerated therefor, is eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed.

(b) A person who committed felonies on and after April 1, 1977, and prior to April 1, 1983, and who has been convicted and incarcerated therefor, is eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have his or her sentence commuted by the Governor, as provided by law. An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. Upon commutation, the inmate is eligible for release on parole as provided in this section;

(2) An inmate classified as a first offender under § 16-93-603, except one under twenty-one (21) years of age as described in subsection (c) of this section and except one who pleads guilty to or has been convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court is not eligible for release on parole until a minimum of one-third ( $\frac{1}{3}$ ) of his or her sentence has been served, with credit for good-time allowances, or one-third ( $\frac{1}{3}$ ) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances. However, if the trier of fact determines that a deadly weapon was used in the commission of the crime, a first offender twenty-one (21) years of age or older shall not be eligible for release on parole until a minimum of one-half ( $\frac{1}{2}$ ) of the sentence is served, with credit for good-time allowances;

(3) An inmate classified as a second offender under § 16-93-603 and one who pleads guilty to or is convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-half ( $\frac{1}{2}$ ) of his or her sentence is served, with credit for good-time allowances, or one-half ( $\frac{1}{2}$ ) of the time to which sentence is commuted by executive clemency, with credit for good-time allowances;

(4) An inmate classified as a third offender under § 16-93-603, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of three-fourths ( $\frac{3}{4}$ ) of his or her sentence is served, with credit for good-time allowances, or three-fourths ( $\frac{3}{4}$ ) of the time to which sentence is commuted by executive clemency, with credit for good-time allowances; and

(5) An inmate classified as a fourth offender under § 16-93-603, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for parole, but is entitled to good-time allowances as provided by law.

(c) Any person under twenty-one (21) years of age who is first convicted of a felony and committed to the first offender penal institution or to the Department of Correction for a term of years is eligible for parole at any time, unless a minimum time to be served is imposed consisting of not more than one-third ( $\frac{1}{3}$ ) of the total time sentenced. In the event the individual is sentenced to a minimum time to be served, he or she is eligible for release on parole after serving the minimum time prescribed, with credit for good-time allowances, and for commutation by the exercise of executive clemency.

(d)

(1) When any convicted felon, while on parole, is convicted of another felony, the felon is to be committed to the Department of Correction to serve the remainder of his or her original sentence, including any portion suspended, with credit for good-time allowances. Upon conviction for the subsequent felony, the court is to require the sentence for the subsequent felony to be served consecutively with the sentence for the previous felony.

(2) Any person found guilty of a felony and placed on probation or suspended sentence therefor who is subsequently found guilty of another felony committed while on probation or suspended sentence is to be committed to the Department of Correction to serve the remainder of his or her suspended sentence plus the sentence imposed for the subsequent felony. The sentence imposed for the subsequent felony is to be served consecutively with the remainder of the suspended sentence.

(e) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts is considered as a single commitment reflecting the cumulative sentence to be served.

(f) Nothing in this section shall be construed to reduce, lessen, or in any manner take away or affect the good-time allowances earned by any individual prior to April 1, 1977.

## History

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Acts 1977, No. 93, § 2; 1981, No. 620, § 16; A.S.A. 1947, § 43-2829.

# A.C.A. § 16-93-607

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 6 — Parole — Eligibility](#)

### **16-93-607. Parole eligibility — Felonies committed on or after April 1, 1983, but before January 1, 1994 — Definition.**

(a) As used in this section, "felony" means a crime classified as Class Y felony, Class A felony, or Class B felony by the laws of this state.

(b) A person who committed a felony prior to April 1, 1983, and who was convicted and incarcerated for that felony, shall be eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed.

(c) A person who commits felonies on or after April 1, 1983, and who shall be convicted and incarcerated for that felony, shall be eligible for release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have his or her sentence commuted by the Governor, as provided by law. An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. Upon commutation, the inmate is eligible for release on parole as provided in this section;

(2) An inmate classified as a first offender under § 16-93-606, except one under twenty-one (21) years of age as described in subsection (d) of this section and except one who pleads guilty or has been convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-third ( $\frac{1}{3}$ ) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances. However, if the trier of fact determines that a deadly weapon was used in the commission of the crime, a first offender twenty-one (21) years of age or older is not eligible for release on parole until a minimum of one-half ( $\frac{1}{2}$ ) of the sentence is served, with credit for good-time allowances;

(3) An inmate classified as a second offender under § 16-93-606 and one who pleads guilty or was convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, are not eligible for release on parole until a minimum of one-half ( $\frac{1}{2}$ ) of his or her sentence shall have been served, with credit for good-time allowances, or one-half ( $\frac{1}{2}$ ) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances;

(4) An inmate classified as a third offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of three-fourths ( $\frac{3}{4}$ ) of his or her sentence shall have been served, with credit for good-time allowances, or three-fourths ( $\frac{3}{4}$ ) of the time to which the sentence is commuted by executive clemency shall have been served, with credit for good-time allowances; and

(5) An inmate classified as a fourth offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for parole, but he or she shall be entitled to good-time allowances as provided by law.

(d) Any person under twenty-one (21) years of age who is first convicted of a felony and committed to the first offender penal institution or to the Department of Correction, as the Division of Correction was known as prior to July 1, 2019, now known as the "Division of Correction", for a term of years is eligible for parole at any time unless a minimum time to be served is imposed consisting of not more than one-third ( $\frac{1}{3}$ ) of the total time sentenced. In the event the individual is sentenced to a minimum time to be served, he or she is eligible for release on parole after serving the minimum time



prescribed, with credit for good-time allowances, and for commutation by the exercise of executive clemency.

(e)

(1) When any convicted felon, while on parole, is convicted of another felony, the felon is to be committed to the division to serve the remainder of his or her original sentence, including any portion suspended, with credit for good-time allowances. Upon conviction for the subsequent felony, the court shall require the sentence for the subsequent felony to be served consecutively with the sentence for the previous felony.

(2) Any person found guilty of a felony and placed on probation or suspended sentence therefor who is subsequently found guilty of another felony committed while on probation or suspended sentence is to be committed to the division to serve the remainder of his or her suspended sentence plus the sentence imposed for the subsequent felony. The sentence imposed for the subsequent felony is to be served consecutively with the remainder of the suspended sentence.

(f) For parole eligibility purposes, consecutive sentences by one (1) or more courts or for one (1) or more counts are to be considered as a single commitment reflecting the cumulative sentence to be served.

(g) Nothing in this section shall be construed to reduce, lessen, or in any manner take away or affect the good-time allowances earned by any individual prior to April 1, 1983.

## History

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Acts 1983, No. 825, §§ 1, 3; A.S.A. 1947, §§ 43-2830.1, 43-2830.3; Acts 2011, No. 570, § 94; 2019, No. 910, §§ 909, 910.

# A.C.A. § 16-93-609

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 6 — Parole — Eligibility](#)

### **16-93-609.** Effect of more than one conviction for certain felonies — Definition. [Effective January 1, 2024.]

(a) Any person who commits murder in the first degree, § 5-10-102, rape, § 5-14-103, or aggravated robbery, § 5-12-103, subsequent to March 24, 1983, and who has previously been found guilty of or pleaded guilty or nolo contendere to murder in the first degree, § 5-10-102, rape, § 5-14-103, or aggravated robbery, § 5-12-103, shall not be eligible for release on parole by the Post-Prison Transfer Board.

(b)

(1) Any person who commits a violent felony offense or any felony sex offense subsequent to August 13, 2001, but before January 1, 2025, and who has previously been found guilty of or pleaded guilty or nolo contendere to any violent felony offense or any felony sex offense shall not be eligible for release on parole by the board.

(2)

(A) As used in this subsection, “a violent felony offense or any felony sex offense” means those offenses listed in § 5-4-501(d)(2).

(B) Unless the sentencing order expressly designates that the defendant was sentenced under this section, “a violent felony offense or any felony sex offense” does not include residential burglary, § 5-39-201, committed before April 1, 2015, unless the defendant was sentenced on or after May 24, 2022.

(c) A person who commits the offense of possession of firearms by certain persons, § 5-73-103, in which the offense is under § 5-73-103(c)(1), after April 27, 2021, is not eligible for parole.

(d)

(1) Any person who commits a parole-ineligible felony on or after January 1, 2024, but before January 1, 2025, is not eligible for release on parole.

(2) As used in this subsection, “parole-ineligible felony” means the same as a felony ineligible to receive earned release credits as defined in § 16-93-1802.

## History

Acts 1983, No. 772, § 1; A.S.A. 1947, § 43-2807.1; Acts 2001, No. 1805, § 1; 2021, No. 946, § 1; 2023, No. 659, § 185; 2023, No. 683, § 2.

# A.C.A. § 16-93-615

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 6 — Parole — Eligibility](#)

16-93-615. Parole eligibility procedures — Offenses committed after January 1, 1994.  
[Effective until January 1, 2024.]

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(a)

(1)

(A) An inmate under sentence for any felony, except those listed in § 5-4-104(c)(2) or subsection (b) of this section, shall be transferred from the Division of Correction to the Division of Community Correction under this section and §§ 16-93-614, 16-93-616, and 16-93-617, subject to rules promulgated by the Board of Corrections or the Parole Board and conditions adopted by the Parole Board.

(B) The determination under subdivision (a)(1)(A) of this section shall be made by reviewing information such as the result of the risk-needs assessment to inform the decision of whether to release a person on parole by quantifying that person's risk to reoffend, and if parole is granted, this information shall be used to set conditions for supervision.

(C) The Parole Board shall begin transfer release proceedings or a preliminary review under this subchapter no later than six (6) months before a person's transfer eligibility date, and the Parole Board shall authorize jacket review procedures no later than six (6) months before a person's transfer eligibility at all institutions holding parole-eligible inmates to prepare parole applications.

(D) This review may be conducted without a hearing when the inmate has not received a major disciplinary report against him or her that resulted in the loss of good time, there has not been a request by a victim to have input on transfer conditions, and there is no indication in the risk-needs assessment review that special conditions need to be placed on the inmate.

(2)

(A) When one (1) or more of the circumstances in subdivision (a)(1) of this section are present, the Parole Board shall conduct a hearing to determine the appropriateness of the inmate for transfer.

(B) The Parole Board has two (2) options:

(i) To transfer the individual to the Division of Community Correction accompanied by notice of conditions of the transfer, including without limitation:

(a) Supervision levels;

(b) Economic fee sanction;

(c) Treatment program;

(d) Programming requirements; and

(e) Facility placement when appropriate; or

(ii) To deny transfer based on a set of established criteria and to accompany the denial with a prescribed course of action to be undertaken by the inmate to rectify the Parole Board's concerns.

(C) Upon completion of the course of action determined by the Parole Board and after final review of the inmate's file to ensure successful completion, the Parole Board shall authorize the inmate's transfer to the Division of Community Correction under this section and §§ 16-93-614, 16-93-616, and 16-93-617, in accordance with administrative policies and procedures governing the transfer and subject to conditions attached to the transfer.

(3) Should an inmate fail to fulfill the course of action outlined by the Parole Board to facilitate transfer to community correction, it shall be the responsibility of the inmate to petition the Parole Board for rehearing.

(4)

(A) The Parole Board shall conduct open meetings and shall make public its findings for each eligible candidate for parole.

(B)

(i) Open meetings held under subdivision (a)(2)(A) of this section may be conducted through video-conference technology if the person is housed at that time in a county jail and if the technology is available.

(ii) Open meetings utilizing video-conference technology shall be conducted in public.

(5) Inmate interviews and related deliberations may be closed to the public.

(b)

(1) An inmate under sentence for one (1) of the following felonies is eligible for discretionary transfer to the Division of Community Correction by the Parole Board after having served one-third ( $\frac{1}{3}$ ) or one-half ( $\frac{1}{2}$ ) of his or her sentence, with credit for meritorious good time, depending on the seriousness determination made by the Arkansas Sentencing Commission, or one-half ( $\frac{1}{2}$ ) of the time to which his or her sentence is commuted by executive clemency, with credit for meritorious good time:

(A) Unless the offense is listed under § 16-93-612(e)(1), the following offenses:

(i) Capital murder, § 5-10-101, or attempted capital murder;

(ii) Murder in the first degree, § 5-10-102, or attempted murder in the first degree;

(iii) Murder in the second degree, § 5-10-103;

(iv) Manslaughter, § 5-10-104;

(v) Negligent homicide, § 5-10-105; or

(vi) An offense under § 5-54-201 et seq.;

(B) Unless the offense is listed under § 16-93-612(e)(1), the following Class Y felonies:

(i) Kidnapping, § 5-11-102;

(ii) Aggravated robbery, § 5-12-103, or attempted aggravated robbery;

(iii) Terroristic act, § 5-13-310;

(iv) Causing a catastrophe, § 5-38-202(a);

(v) Arson, § 5-38-301;

(vi) Aggravated residential burglary, § 5-39-204; or

(vii) Unlawful discharge of a firearm from a vehicle, § 5-74-107;

(C) Unless the offense is listed under § 16-93-612(e)(1), an offense for which the inmate is required upon release to register as a sex offender under the Sex Offender Registration Act of 1997, § 12-12-901 et seq.;

(D) Battery in the first degree, § 5-13-201;

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

(F) Engaging in a continuing criminal enterprise, § 5-64-405; or

(G) Simultaneous possession of drugs and firearms, § 5-74-106.

(2) The transfer of an offender convicted of an offense listed in subdivision (b)(1) of this section is not automatic.

(3)

(A) Review of an inmate convicted of the enumerated offenses in subdivision (b)(1) of this section shall be based upon policies and procedures adopted by the Parole Board for the review, and the Parole Board shall conduct a risk-needs assessment review.

(B) The policies and procedures shall include a provision for notification of the victim or victims that a hearing shall be held and records kept of the proceedings and that there be a listing of the criteria upon which a denial may be based.

(4) Any transfer of an offender specified in this subsection shall be issued upon an order, duly adopted, of the Parole Board in accordance with such policies and procedures.

(5) After the Parole Board has fully considered and denied the transfer of an offender sentenced for committing an offense listed in subdivision (b)(1) of this section, the Parole Board may delay any reconsideration of the transfer for a maximum period of two (2) years.

(6) Notification of the court, prosecutor, county sheriff, and the victim or the victim's next of kin for a person convicted of an offense listed in subdivision (b)(1) of this section shall follow the procedures set forth below:

(A)

(A) Before the Parole Board shall grant any transfer, the Parole Board shall solicit the written or oral recommendations of the committing court, the prosecuting attorney, and the county sheriff of the county from which the inmate was committed.

(B) If the person whose transfer is being considered by the Parole Board was convicted of one (1) of the offenses enumerated in subdivision (b)(1) of this section, the Parole Board shall also notify the victim of the crime or the victim's next of kin of the transfer hearing and shall solicit written or oral recommendations of the victim or his or her next of kin regarding the granting of the transfer unless the prosecuting attorney has notified the Parole Board at the time of commitment of the prisoner that the victim or his or her next of kin does not want to be notified of future transfer hearings.

(C) The recommendations shall not be binding upon the Parole Board in the granting of any transfer but shall be maintained in the inmate's file.

(D) When soliciting recommendations from a victim of a crime, the Parole Board shall notify the victim or his or her next of kin of the date, time, and place of the transfer hearing;

(B)

(i) The Parole Board shall not schedule transfer hearings at which victims or relatives of victims of crimes are invited to appear at a facility wherein inmates are housed other than the Central Administration Building of the Division of Correction at Pine Bluff.

(ii) Nothing herein shall be construed as prohibiting the Parole Board from conducting transfer hearings in two (2) sessions, one (1) at the place of the inmate's incarceration for interviews with the inmate, the inmate's witnesses, and correctional personnel, and the second session for victims and relatives of victims as set out in subdivision (b)(6)(B)(i) of this section;

(C)

(i) At the time that any person eligible under subdivision (c)(1) of this section is transferred by the Parole Board, the Division of Community Correction shall give written notice of the granting of the transfer to the county sheriff, the committing court, and the chief of police of each city of the first class of the county from which the person was sentenced.

(ii) If the person is transferred to a county other than that from which he or she was committed, the Parole Board shall give notice to the chief of police or marshal of the city to which he or she is transferred, to the chief of police of each city of the first class and the county sheriff of the county to which he or she is transferred, and to the county sheriff of the county from which the person was committed; and

(D)

(i) It shall be the responsibility of the prosecuting attorney of the county from which the inmate was committed to notify the Parole Board at the time of commitment of the desire of the victim or his or her next of kin to be notified of any future transfer hearings and to forward to the Parole Board the last known address and telephone number of the victim or his or her next of kin.

(ii) It shall be the responsibility of the victim or his or her next of kin to notify the Parole Board of any change in address or telephone number.

(iii) It shall be the responsibility of the victim or his or her next of kin to notify the Parole Board after the date of commitment of any change in regard to the desire to be notified of any future transfer hearings.

(c)

(1) In all other felonies, before the Parole Board sets conditions for transfer of an inmate to community correction, a victim, or his or her next of kin in cases in which the victim is unable to express his or her wishes, who has expressed the wish to be consulted by the Parole Board shall be notified of the date, time, and place of the transfer hearing.

(2)

(A) A victim or his or her next of kin who wishes to be consulted by the Parole Board shall inform the Parole Board in writing at the time of sentencing.

(B) A victim or his or her next of kin who does not so inform the Parole Board shall not be notified by the Parole Board.

(3)

(A) Victim input to the Parole Board shall be limited to oral or written recommendations on conditions relevant to the offender under review for transfer.

(B) The recommendations shall not be binding on the Parole Board, but shall be given due consideration within the resources available for transfer.

(d)

(1) The Parole Board shall approve a set of conditions that shall be applicable to all inmates transferred from the Division of Correction to the Division of Community Correction.

(2) The set of conditions is subject to periodic review and revision as the Parole Board deems necessary.

(e)

(1) The course of action required by the Parole Board shall not be outside the current resources of the Division of Correction nor the conditions set be outside the current resources of the Division of Community Correction.

(2) However, the Division of Correction and Division of Community Correction shall strive to accommodate the actions required by the Board of Corrections or the Parole Board to the best of their abilities.

(f) Transfer is not an award of clemency, and it shall not be considered as a reduction of sentence or a pardon.

(g) Every inmate while on transfer status shall remain in the legal custody of the Division of Correction under the supervision of the Division of Community Correction and subject to the orders of the Parole Board.

(h) An inmate who is sentenced under the provisions of § 5-4-501(c) or § 5-4-501(d) for a serious violent felony or a felony involving violence may be considered eligible for parole or for community correction transfer upon reaching regular parole or transfer eligibility, but only after reaching a minimum age of fifty-five (55) years.

(i) Decisions on parole release, courses of action applicable prior to transfer, and transfer conditions to be set by the Parole Board shall be based on a reasoned and rational plan developed in conjunction with an accepted risk-needs assessment tool such that each decision is defensible based on preestablished criteria.

## History

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Acts 2011, No. 570, § 100; 2013, No. 136, § 1; 2013, No. 485, § 1; 2015, No. 609 §§ 2, 3; 2015, No. 895, § 25; 2015, No. 1152, § 16; 2021, No. 1102, § 8.

# A.C.A. § 16-93-1802

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 93 Probation and Parole](#)
- [Subchapter 18 — Release Eligibility and Procedures for Offenses Committed on or after January 1, 2025 \[Effective January 1, 2024\]](#)

## 16-93-1802. Definitions. [Effective January 1, 2024.]

As used in this subchapter:

(1)

(A) "Felony ineligible to receive earned release credits" means a felony offense for which a person is not eligible for release until one hundred percent (100%) of the sentence imposed by the sentencing court has been served.

(B) "Felony ineligible to receive earned release credits" includes only the following felony offenses, or an attempt, solicitation, or conspiracy to commit one (1) of the following felony offenses:

(i) Capital murder, § 5-10-101;

(ii) Murder in the first degree, § 5-10-102;

(iii) Aggravated death by delivery, § 5-10-202;

(iv) Kidnapping, § 5-11-102, if a Class Y felony;

(v) Aggravated robbery, § 5-12-103;

(vi) Rape, § 5-14-103;

(vii) Trafficking of persons, § 5-18-103;

(viii) Engaging children in sexually explicit conduct for use in visual or print medium, § 5-27-303;

(ix) Pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;

(x) Transportation of minors for prohibited sexual conduct, § 5-27-305;

(xi) Internet stalking of a child, § 5-27-306;

(xii) Sexually grooming a child, § 5-27-307, if a felony offense;

(xiii) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;

(xiv) Computer exploitation of a child, § 5-27-605;

(xv) Causing a catastrophe, § 5-38-202(a);

(xvi) Aggravated residential burglary, § 5-39-204, if a Class Y felony;

(xvii) Treason, § 5-51-201;

(xviii) Fleeing, § 5-54-125, if a Class B felony;

(xix) Predatory marketing of fentanyl to minors, § 5-64-421(i); and

(xx) Possession of firearms by certain persons, § 5-73-103, if a Class B felony; and

(2)

(A) "Restricted release felony" means a felony offense for which a person is not eligible for release until at least eighty-five percent (85%) of the sentence imposed by the sentencing court has been served.

(B) "Restricted release felony" includes only the following felony offenses, or an attempt, solicitation, or conspiracy to commit one (1) of the following felony offenses:

(i) Murder in the second degree, § 5-10-103;

(ii) Manslaughter, § 5-10-104;

(iii) Negligent homicide, § 5-10-105, if a Class B felony;

(iv) Encouraging the suicide of another person, § 5-10-107;

(v) Death by delivery in the first degree, § 5-10-203;

(vi) Death by delivery in the second degree, § 5-10-204;

- (vii) Kidnapping, § 5-11-102, if a Class B felony;
- (viii) Battery in the first degree, § 5-13-201;
- (ix) Terroristic act, § 5-13-310;
- (x) Sexual indecency with a child, § 5-14-110;
- (xi) Sexual extortion, § 5-14-113;
- (xii) Exposing another person to human immunodeficiency virus, § 5-14-123;
- (xiii) Sexual assault in the first degree, § 5-14-124;
- (xiv) Unlawful female genital mutilation of a minor, § 5-14-136;
- (xv) Crime of video voyeurism, § 5-16-101, if a Class C felony offense;
- (xvi) Voyeurism, § 5-16-102, if a Class C felony offense;
- (xvii) Patronizing a victim of human trafficking, § 5-18-104;
- (xviii) Grooming a minor for future sex trafficking, § 5-18-106;
- (xix) Traveling for the purpose of an unlawful sex act with a minor, § 5-18-107;
- (xx) Domestic battering in the first degree, § 5-26-303;
- (xxi) Aggravated assault on a family or household member, § 5-26-306, if under § 5-26-306(a)(3);
- (xxii) Permitting abuse of a minor, § 5-27-221, if a Class B felony;
- (xxiii) Exposing a child to a chemical substance or methamphetamine, § 5-27-230;
- (xxiv) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- (xxv) Arson, § 5-38-301, if a Class Y felony;
- (xxvi) Aggravated residential burglary, § 5-39-204, if a Class A felony;
- (xxvii) Advocating assassination or overthrow of government, § 5-51-202;
- (xxviii) First degree escape, § 5-54-110;
- (xxix) Soliciting material support for terrorism, § 5-54-202(a);
- (xxx) Providing material support for a terrorist act, § 5-54-202(b);
- (xxxi) Making a terrorist threat, § 5-54-203;
- (xxxii) Falsely communicating a terrorist threat, § 5-54-204;
- (xxxiii) Terrorism, § 5-54-205;
- (xxxiv) Hindering prosecution of terrorism, § 5-54-207;
- (xxxv) Exposing the public to toxic biological, chemical, or radioactive substances, § 5-54-208;
- (xxxvi) Use of a hoax substance or hoax bomb, § 5-54-209;
- (xxxvii) Engaging in a continuing criminal enterprise, § 5-64-405;
- (xxxviii) Delivery of fentanyl, § 5-64-421(c);
- (xxxix) Manufacture of fentanyl, § 5-64-421(d);
- (xl) Trafficking a controlled substance, § 5-64-440;
- (xli) Driving or boating while intoxicated, sixth or subsequent offense, § 5-65-111(f);
- (xlii) Promoting prostitution in the first degree, § 5-70-104, if a Class B felony;
- (xliii) Arming rioters, § 5-71-204;
- (xliv) Criminal use of prohibited weapons, § 5-73-104, if a Class B felony;
- (xlv) Criminal possession of explosive material or a destructive device, § 5-73-108(a);
- (xlvi) Criminal distribution of explosive material, § 5-73-108(b);
- (xlvii) Possession of stolen explosive material, § 5-73-108(c);
- (xlviii) Unlawful receipt or possession of an explosive material, § 5-73-108(d);
- (xlix) Theft of any explosive material with the purpose to cause harm to a person or property, § 5-73-108(f);
- (l) Possession or use of weapons by incarcerated persons, § 5-73-131;
- (li) Possession or use of a machine gun in the course of a criminal offense, § 5-73-211;
- (lii) Unlawful discharge of a firearm from a vehicle in the first degree, § 5-74-107(a);
- (liii) Using a born-alive infant for scientific research or other kind of experimentation, § 20-16-604(i);
- (liv) Partial-birth abortion, § 20-16-1203; and
- (lv) Performing an abortion in violation of the Arkansas Unborn Child Protection from Dismemberment Abortion Act, § 20-16-1801 et seq.

## History

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# A.C.A. § 16-98-301

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 98 Treatment for Drug Abuse](#)
- [Subchapter 3 — Arkansas Drug Court Act](#)

### 16-98-301. Short title and definitions.

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(a) This subchapter shall be known as the "Arkansas Drug Court Act".

(b) As used in this subchapter:

(1) "Evidence-based practices" means supervision, policies, procedures, and practices proven through research to reduce recidivism;

(2) "Validated risk-needs assessment" means a determination of a person's risk to reoffend and the needs that, when addressed, reduce the risk to reoffend through the use of an actuarial assessment tool that assesses the dynamic and static factors that drive criminal behavior; and

(3) "Violent felony offense" means an offense that is punishable by a term of imprisonment exceeding one (1) year, and during the course of the offense:

(A) The person carried, possessed, or used a firearm or other dangerous weapon and the use of deadly force was used against another person; or

(B) Death or serious physical injury was inflicted upon another person, regardless of whether death or serious physical injury was an element of the crime for which the person was convicted.

### History

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Acts 2003, No. 1266, § 1; 2011, No. 570, § 111; 2015, No. 895, § 31.

# A.C.A. § 16-100-208

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 100 Mental Health and the Criminal Justice System](#)
- [Subchapter 2 — Mental Health Specialty Courts](#)

### **16-100-208. Completion of program — Dismissal of case — Sealing of record.**

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(a) Upon the mental health specialty court's own motion or upon a request from a mental health specialty court program participant or his or her attorney, a mental health specialty court may order dismissal of the case against the mental health specialty court program participant and the sealing of the record if:

- (1) The mental health specialty court program participant has successfully completed the mental health specialty court program, as determined by the mental health specialty court;
- (2) The mental health specialty court program participant has received aftercare programming or a course of continuing mental health treatment if recommended by the mental health specialty court program participant's healthcare provider;
- (3) The mental health specialty court has received a recommendation from the prosecuting attorney for dismissal of the case and the sealing of the record; and
- (4) The mental health specialty court, after considering the mental health specialty court program participant's criminal history, determines that dismissal of the case and the sealing of the record are appropriate.

(b) Unless otherwise ordered by the mental health specialty court, sealing of the record under this section shall be as described in the Comprehensive Criminal Record Sealing Act of 2013, § 16-90-1401 et seq.

(c) If a mental health specialty court program participant has successfully completed the program and has his or her case dismissed under this section, he or she may petition the mental health specialty court for relief from disability to restore the mental health specialty court program participant's right to purchase a firearm and to otherwise be removed from the Federal Bureau of Investigation's National Instant Criminal Background Check System database.

### History

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Acts 2017, No. 506, § 1.

# A.C.A. § 16-123-348

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 7. Particular Proceedings And Remedies](#)
- [Chapter 123 Civil Rights](#)
- [Subchapter 3 — Arkansas Fair Housing Commission](#)

### 16-123-348. Violations — Bodily injury — Penalties.

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- (a) It is unlawful for a person, whether or not acting under color of law, by force or threat of force, to willfully injure, intimidate, or interfere with, or attempt to injure, intimidate, or interfere with:
- (1) Any person because of his or her race, color, religion, sex, disability, as defined in § 16-123-302, familial status, as defined in § 16-123-302, or national origin or because the person is or has been selling, purchasing, renting, financing, occupying, or contracting or negotiating for the sale, purchase, rental, financing, or occupation of any dwelling, or applying for or participating in any service, organizations, or facility relating to the business of selling or renting dwellings;
- (2) Any person because he or she is or has been, or in order to intimidate the person or any other person or any class of persons from:
- (A) Participating, without discrimination on account of race, color, religion, sex, disability, as defined in § 16-123-302, familial status, as defined in § 16-123-302, or national origin, in any of the activities, services, organizations, or facilities described in subdivision (a)(1) of this section; or
- (B) Affording any person or class of persons opportunity or protection so to participate; or
- (3) Any citizen because he or she is or has been, or in order to discourage the citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, disability, as defined in § 16-123-302, familial status, as defined in § 16-123-302, or national origin, in any of the activities, services, organizations, or facilities described in subdivision (a)(1) of this section, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate.
- (b) A person who violates any provision of subsection (a) of this section shall:
- (1) If the violation results in bodily injury, be fined not more than two hundred fifty thousand dollars (\$250,000) or be imprisoned for not more than ten (10) years, or both;
- (2) If the violation results in death, be imprisoned for not less than ten (10) years or life;
- (3) If the violation results in property damage exceeding one hundred dollars (\$100) or if the violation involves the use or attempted use of fire or a firearm, be fined not more than two hundred fifty thousand dollars (\$250,000) or be imprisoned for not more than five (5) years, or both; or
- (4) Otherwise, be fined not more than one hundred thousand dollars (\$100,000) or be imprisoned for not more than one (1) year, or both.

### History

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Acts 2001, No. 1785, § 49; 2003, No. 1775, § 12.

# A.C.A. § 20-38-105

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 20 Public Health and Welfare](#)
- [Subtitle 2. Health and Safety](#)
- [Chapter 38 Criminal Background Checks](#)

### **20-38-105. Disqualification from employment — Denial or revocation — Penalties.** [Effective January 1, 2024.]

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(a)

(1) Except as provided in subsection (d) of this section, the licensing or certifying agency shall issue a determination that a person is disqualified as a service provider, operator, or from employment with a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(2) Except as provided in subsection (d) of this section, a service provider shall not knowingly employ a person and the licensing or certifying agency shall not knowingly contract with, license, exempt from licensure, certify, or otherwise authorize a person to be a service provider if the person has pleaded guilty or nolo contendere to or has been found guilty of:

(A) Any of the offenses listed in subsection (b) of this section by any court in the State of Arkansas;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(b) As used in this section, the following criminal offenses apply to this section unless the record of the offense is expunged, pardoned, or otherwise sealed:

(1) Criminal attempt, § 5-3-201, criminal complicity, § 5-3-202, criminal solicitation, § 5-3-301, or criminal conspiracy, § 5-3-401, to commit any of the offenses in this subsection;

(2) Capital murder, § 5-10-101;

(3) Murder, §§ 5-10-102 and 5-10-103;

(4) Manslaughter, § 5-10-104;

(5) Negligent homicide, § 5-10-105;

(6) Kidnapping, § 5-11-102;

(7) False imprisonment, §§ 5-11-103 and 5-11-104;

(8) Permanent detention or restraint, § 5-11-106;

(9) Robbery, §§ 5-12-102 and 5-12-103;

(10) Battery, §§ 5-13-201 — 5-13-203;

(11) Assault, §§ 5-13-204 — 5-13-207;

(12) Coercion, § 5-13-208;

(13) Introduction of a controlled substance into the body of another person, § 5-13-210;

(14) Terroristic threatening, § 5-13-301;

(15) Terroristic act, § 5-13-310;

(16) Any sexual offense, § 5-14-101 et seq., except for a misdemeanor violation of sexual indecency with a child, § 5-14-110;

(17) Voyeurism, § 5-16-102;

(18) Communicating a death threat concerning a school employee or student, § 5-17-101;

(19) Incest, § 5-26-202;

(20) Domestic battery, §§ 5-26-303 — 5-26-306;

(21) Interference with visitation, § 5-26-501;

(22) Interference with court-ordered custody, § 5-26-502;

(23) Endangering the welfare of an incompetent person, §§ 5-27-201 and 5-27-202;

(24) Endangering the welfare of a minor, §§ 5-27-205 and 5-27-206;

- (25) Contributing to the delinquency of a minor, § 5-27-209;
- (26) Contributing to the delinquency of a juvenile, § 5-27-220;
- (27) Permitting abuse of a minor, § 5-27-221;
- (28) Soliciting money or property from incompetent persons, § 5-27-229;
- (29) Engaging children in sexually explicit conduct for use in visual or print media, § 5-27-303;
- (30) Pandering or possessing a visual or print medium depicting sexually explicit conduct involving a child, § 5-27-304;
- (31) Transportation of minors for prohibited sexual conduct, § 5-27-305;
- (32) Employing or consenting to the use of a child in a sexual performance, § 5-27-402;
- (33) Producing, directing, or promoting a sexual performance by a child, § 5-27-403;
- (34) Computer crimes against minors, § 5-27-601 et seq.;
- (35) Felony abuse of an endangered or impaired person, § 5-28-103;
- (36) Theft of property, § 5-36-103;
- (37) Theft of services, § 5-36-104;
- (38) Theft by receiving, § 5-36-106;
- (39) Forgery, § 5-37-201;
- (40) Criminal impersonation, § 5-37-208;
- (41) Financial identity fraud, § 5-37-227;
- (42) Arson, § 5-38-301;
- (43) Burglary, §§ 5-39-201 and 5-39-204;
- (44) Breaking or entering, § 5-39-202;
- (45) Resisting arrest, § 5-54-103;
- (46) Felony interference with a law enforcement officer, § 5-54-104;
- (47) Cruelty to animals, §§ 5-62-103 and 5-62-104;
- (48) Felony violation of the Uniform Controlled Substances Act, § 5-64-101 et seq.;
- (49) Public display of obscenity, § 5-68-205;
- (50) Promoting obscene materials, § 5-68-303;
- (51) Promoting obscene performance, § 5-68-304;
- (52) Obscene performance at a live public show, § 5-68-305;
- (53) Prostitution, § 5-70-102;
- (54) Sexual solicitation, § 5-70-103;
- (55) Promotion of prostitution, §§ 5-70-104 — 5-70-106;
- (56) Stalking, § 5-71-229;
- (57) Criminal use of a prohibited weapon, § 5-73-104;
- (58) Simultaneous possession of drugs and firearms, § 5-74-106;
- (59) Unlawful discharge of a firearm from a vehicle, § 5-74-107;
- (60) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and
- (61) Sexual extortion, § 5-14-113.

(c)

(1) The provisions of this subsection shall not be waived by the licensing or certifying agency.

(2) Because of the serious nature of the offenses and the close relationship to the type of work that is to be performed, a conviction or plea of guilty or nolo contendere for any of the offenses listed in this subsection, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, shall result in permanent disqualification from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider and is not subject to subsection (d) of this section:

(A) Any of the following offenses by any court in the State of Arkansas:

- (i) Capital murder, § 5-10-101;
- (ii) Murder in the first degree, § 5-10-102;
- (iii) Murder in the second degree, § 5-10-103;
- (iv) Kidnapping, § 5-11-102;
- (v) Rape, § 5-14-103;
- (vi) Sexual assault in the first degree, § 5-14-124;
- (vii) Sexual assault in the second degree, § 5-14-125;
- (viii) Endangering the welfare of an incompetent person in the first degree, § 5-27-201;
- (ix) Abuse of an endangered or impaired person, § 5-28-103, if it is a felony;
- (x) Arson, § 5-38-301;

(xi) Aggravated assault upon a law enforcement officer or an employee of a correctional facility, § 5-13-211, if a Class Y felony; and

(xii) Sexual extortion, § 5-14-113;

(B) Any similar offense by a court in another state; or

(C) Any similar offense by a federal court.

(3) For purposes of licensure as a childcare facility, exemption from licensure as a church-exempt childcare facility, or employment with a childcare facility or church-exempt childcare facility, a conviction or plea of guilty or nolo contendere for any offense that involves violence or a sexual act, whether or not the record of the offense is expunged, pardoned, or otherwise sealed, may result in permanent disqualification from licensure as a childcare facility, exemption from licensure as a church-exempt childcare facility, or employment with a childcare facility or church-exempt childcare facility and may not be subject to subsection (d) of this section.

(d)

(1) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a misdemeanor offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least five (5) years from the date of the request for the criminal history records check; and

(C) The person has no criminal convictions or pleas of guilty or nolo contendere of any type or nature during the five-year period preceding the criminal history records check request.

(2) This section shall not disqualify a person from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for a felony offense;

(B) The date of the conviction or plea of guilty or nolo contendere is at least ten (10) years from the date of the background check request; and

(C) The individual has no criminal convictions or pleas of guilty or nolo contendere during the ten-year period preceding the request for a criminal history records check.

(3) This section does not disqualify a person from employment with a service provider if:

(A) The conviction or plea of guilty or nolo contendere was for any of the nonviolent offenses listed below:

(i) Theft by receiving, § 5-36-106;

(ii) Forgery, § 5-37-201;

(iii) Financial identity fraud, § 5-37-227;

(iv) Resisting arrest, § 5-54-103;

(v) Criminal impersonation in the second degree, § 5-37-208(b);

(vi) Interference with visitation, § 5-26-501;

(vii) Interference with court-ordered custody, § 5-26-502;

(viii) Prostitution, § 5-70-102; and

(ix) Sexual solicitation, § 5-70-103;

(B) The service provider wants to employ the person;

(C) The person remains in employment with the same service provider;

(D) The person has completed probation, parole, or post-release supervision, paid all court-ordered fees or fines, including restitution, and fully complied with all court orders pertaining to the conviction or plea;

(E) The person will be employed by:

(i) A long-term care facility licensed by the Office of Long-Term Care;

(ii) An intermediate care or other facility, developmental day treatment clinic services provider, or group home licensed or certified by the Division of Developmental Disabilities Services; or

(iii) A childcare facility or a church-exempt childcare facility licensed by the Division of Child Care and Early Childhood Education;

(F) Subsequent to employment, the person does not plead guilty or nolo contendere to or is found guilty of any offense in subsection (b) of this section; and

(G) The person does not have a true or founded report of child maltreatment or adult maltreatment in a central registry.

(e) A person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person has been found guilty of or has pleaded guilty or nolo contendere to a misdemeanor offense not listed in subsection (b) of this section, a similar misdemeanor offense in another state, or a similar federal misdemeanor offense.

- (f) Even if the person would otherwise be disqualified under this section, a person shall not be disqualified from employment with a service provider or licensure, exemption from licensure, certification, or other operating authority as a service provider if the person:
- (1) Was not disqualified on August 31, 2009; and
  - (2) Since August 31, 2009, has not been found guilty of or pleaded guilty or nolo contendere to:
    - (A) An offense listed in subsection (b) of this section;
    - (B) A similar offense in another state; or
    - (C) A similar federal offense.
- (g) Notwithstanding any other provision of law, a person is not disqualified from employment if:
- (1) The person is employed as or being considered for employment as a peer support specialist or other similar position requiring that the person has personally received services within the behavioral health system;
  - (2) The person works or is applying to work with individuals receiving substance abuse treatment; and
  - (3)
    - (A) The only offense on the person's criminal background check that would disqualify him or her from employment is an offense that does not involve violence or a sexual act.
    - (B) If the offense on the person's criminal background check that would disqualify him or her from employment is an offense that involves violence, the Department of Human Services shall evaluate the offense and make a determination, on the basis of criteria and limitation adopted by the department in rule, as to whether the person may be employed as a peer support specialist.

## History

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Acts 2009, No. 762, § 4; 2011, No. 516, §§ 1-3; 2013, No. 990, § 2; 2013, No. 1132, §§ 25, 26; 2017, No. 367, §§ 25, 26; 2017, No. 664, §§ 19, 20; 2017, No. 1077, § 1; 2019, No. 951, § 1; 2023, No. 200, § 1; 2023, No. 619, § 26; 2023, No. 659, § 244.

# A.C.A. § 20-48-402

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 20 Public Health and Welfare](#)
- [Subtitle 3. Mental Health](#)
- [Chapter 48 Treatment of Persons With Developmental Disabilities](#)
- [Subchapter 4 — Human Development Centers Generally](#)

### 20-48-402. Penalties.

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Any person who violates the following provisions shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than two hundred dollars (\$200) or by imprisonment for not less than six (6) months, or both:

- (1) Under the provisions of this subchapter, knowingly, unlawfully, or improperly causes an individual to be adjudged developmentally disabled;
- (2) Procures the escape of an individual or knowingly conceals an escaped individual of a human development center; or
- (3) Unlawfully brings any firearm, deadly weapon, or explosive into a center or its grounds or passes any thereof to an individual, employee, or officer of a center.

### History

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Acts 1955, No. 6, § 16; A.S.A. 1947, § 59-1116.



# A.C.A. § 23-12-804

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 23 Public Utilities and Regulated Industries](#)
- [Subtitle 1. Public Utilities And Carriers](#)
- [Chapter 12 Operation and Maintenance of Railroads](#)
- [Subchapter 8 — Offenses Relating to Railroads](#)

### **23-12-804. Discharge of firearms or throwing objects at railroad or street car.**

If any person wantonly, maliciously, or mischievously discharges firearms or throws stones, sticks, clubs, or other missiles at, into, or against any locomotive, railroad car, or street car on any railroad, he or she shall be guilty of a misdemeanor. On conviction the person shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250) or by imprisonment in the county jail for not more than three (3) months, or by both a fine and imprisonment.

## History

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Acts 1893, No. 77, § 1, p. 144; C. & M. Dig., § 8597; Pope's Dig., § 11175; A.S.A. 1947, § 73-1110.

# A.C.A. § 5-17-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 2. Offenses Against the Person](#)
- [Chapter 17 Death Threats](#)

### **5-17-101. Communicating a death threat concerning a school employee or student.**

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(a) A person commits the offense of communicating a death threat concerning a school employee or student if:

- (1) The person communicates to any other person a threat to cause the death of a school employee or student;
- (2) The threat involves the use of a firearm or other deadly weapon;
- (3) A reasonable person would believe the person making the threat intends to carry out the threat;
- (4) The person making the threat purposely engaged in conduct that constitutes a substantial step in a course of conduct intended to culminate in the commission of the threatened act; and
- (5) There is a close temporal relationship between the threatened act and the substantial step.

(b) Conduct is not a substantial step under this section unless the conduct is strongly corroborative of the person's criminal purpose.

(c) Communicating a death threat concerning a school employee or student is a Class D felony.

(d) As used in this section, "school" means any:

- (1) Elementary school, junior high school, or high school;
- (2) Technical institute or post-secondary vocational-technical school; or
- (3) Two-year or four-year college or university.

### History

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Acts 2001, No. 1046, §§ 1, 2.

# A.C.A. § 5-27-210

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 3. Offenses Involving Families, Dependents, Etc.](#)
- [Chapter 27 Offenses Against Children or Incompetents](#)
- [Subchapter 2 — Offenses Generally](#)

### **5-27-210. Parental responsibility for student's firearm possession.**

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(a) As used in this section:

(1) "Firearm" means:

(A) Any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable; or

(B) Components that can readily be assembled into a device described in subdivision (a)(1)(A) of this section; and

(2) "Parent" means a parent, stepparent, legal guardian, or person in loco parentis or who has legal custody of a student pursuant to a court order and with whom the student resides.

(b) A parent of a minor is guilty of a Class B misdemeanor if:

(1) The parent knows that the minor is in illegal possession of a firearm in or upon:

(A) The premises of a public or private school;

(B) A public or private school's athletic stadium or other facility or building in which school-sponsored events are conducted; or

(C) A public park, playground, or civic center; and

(2) The parent fails to:

(A) Prevent the illegal possession; or

(B) Report the illegal possession to an appropriate school or law enforcement official.

### History

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Acts 1999, No. 1149, §§ 1, 2.

# A.C.A. § 5-73-119

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### **5-73-119. Handguns — Possession by minor or possession on school property.**

---

(a)

(1) No person in this state under eighteen (18) years of age shall possess a handgun.

(2)

(A) A violation of subdivision (a)(1) of this section is a Class A misdemeanor.

(B) A violation of subdivision (a)(1) of this section is a Class D felony if the person has previously:

(i) Been adjudicated delinquent for a violation of subdivision (a)(1) of this section;

(ii) Been adjudicated delinquent for any offense that would be a felony if committed by an adult; or

(iii) Pled guilty or nolo contendere to or been found guilty of a felony in circuit court while under eighteen (18) years of age.

(b)

(1) No person in this state shall possess a firearm:

(A) Upon the developed property of a public or private school, kindergarten through grade twelve (K-12);

(B) In or upon any school bus; or

(C) At a designated bus stop as identified on the route list published by a school district each year.

(2)

(A) A violation of subdivision (b)(1) of this section is a Class D felony.

(B) No sentence imposed for a violation of subdivision (b)(1) of this section shall be suspended or probated or treated as a first offense under § 16-93-301 et seq.

(c)

(1) Except as provided in § 5-73-322, a person in this state shall not possess a handgun upon the property of any private institution of higher education or a publicly supported institution of higher education in this state on or about his or her person, in a vehicle occupied by him or her, or otherwise readily available for use with a purpose to employ the handgun as a weapon against a person.

(2) A violation of subdivision (c)(1) of this section is a Class D felony.

(d) "Handgun" means a firearm capable of firing rimfire ammunition or centerfire ammunition and designed or constructed to be fired with one (1) hand.

(e) It is permissible to carry a handgun under this section if at the time of the act of possessing a handgun or firearm:

(1) The person is in his or her own dwelling or place of business or on property in which he or she has a possessory or proprietary interest, except upon the property of a public or private institution of higher learning;

(2) The person is a law enforcement officer, correctional officer, member of a municipal fire department bomb squad who is authorized to carry a concealed handgun under § 12-15-204, or member of the armed forces acting in the course and scope of his or her official duties;

(3) The person is assisting a law enforcement officer, correctional officer, or member of the armed forces acting in the course and scope of his or her official duties pursuant to the direction or request of the law enforcement officer, correctional officer, or member of the armed forces;

(4) The person is a registered commissioned security guard acting in the course and scope of his or her duties;

- (5) The person is hunting game with a handgun or firearm that may be hunted with a handgun or firearm under the rules and regulations of the Arkansas State Game and Fish Commission or is en route to or from a hunting area for the purpose of hunting game with a handgun or firearm;
- (6)
- (A) The person is a certified law enforcement officer, either on-duty or off-duty.
- (B) If the person is an off-duty law enforcement officer, he or she may be required by a public school or publicly supported institution of higher education to be in physical possession of a valid identification identifying the person as a law enforcement officer;
- (7) The person is on a journey, unless the person is eighteen (18) years of age or less;
- (8) The person is participating in a certified hunting safety course sponsored by the commission or a firearm safety course recognized and approved by the commission or by a state or national nonprofit organization qualified and experienced in firearm safety;
- (9) The person is participating in a school-approved educational course or sporting activity involving the use of firearms;
- (10) The person is a minor engaged in lawful marksmanship competition or practice or other lawful recreational shooting under the supervision of his or her parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis or is traveling to or from a lawful marksmanship competition or practice or other lawful recreational shooting with an unloaded handgun or firearm accompanied by his or her parent, legal guardian, or other person twenty-one (21) years of age or older standing in loco parentis;
- (11) The person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun on the developed property of:
- (A) A kindergarten through grade twelve (K-12) private school operated by a church or other place of worship that:
- (i) Is located on the developed property of the kindergarten through grade twelve (K-12) private school;
- (ii) Allows the person to carry a concealed handgun into the church or other place of worship under § 5-73-306; and
- (iii) Allows the person to possess a concealed handgun on the developed property of the kindergarten through grade twelve (K-12) private school; or
- (B) A kindergarten through grade twelve (K-12) private school or a prekindergarten private school that through its governing board or director has set forth the rules and circumstances under which the licensee may carry a concealed handgun into a building or event of the kindergarten through grade twelve (K-12) private school or the prekindergarten private school; or
- (12)
- (A) The person has a license to carry a concealed handgun under § 5-73-301 et seq. and is carrying a concealed handgun in his or her motor vehicle or has left the concealed handgun in his or her locked and unattended motor vehicle in a publicly owned and maintained parking lot.
- (B)
- (i) As used in this subdivision (e)(12), "parking lot" means a designated area or structure or part of a structure intended for the parking of motor vehicles or a designated drop-off zone for children at a school.
- (ii) "Parking lot" does not include a parking lot owned, maintained, or otherwise controlled by the Division of Correction or Division of Community Correction.

## History

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Acts 1989, No. 649, §§ 1-4; 1993, No. 1166, § 1; 1993, No. 1189, § 4; 1994 (2nd Ex. Sess.), No. 57, § 1; 1994 (2nd Ex. Sess.), No. 58, § 1; 1999, No. 1282, § 1; 2001, No. 592, § 1; 2005, No. 1994, § 476; 2013, No. 226, § 1; 2013, No. 746, § 1; 2013, No. 1390, § 1; 2015, No. 933, § 1; 2015, No. 1078, § 1; 2019, No. 472, § 1; 2019, No. 910, § 679; 2023, No. 166, § 1; 2023, No. 773, § 1.

# A.C.A. § 5-73-128

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### 5-73-128. Offenses upon property of public schools.

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(a)

(1) The court shall prepare and transmit to the Department of Finance and Administration an order of denial of driving privileges for a person within twenty-four (24) hours after the plea or finding, if a person who is less than nineteen (19) years of age at the time of the commission of the offense:

(A) Pleads guilty or nolo contendere to any criminal offense under § 5-73-101 et seq. or the Uniform Machine Gun Act, § 5-73-201 et seq., and the plea is accepted by the court, or is found guilty of any criminal offense under § 5-73-101 et seq. or the Uniform Machine Gun Act, § 5-73-201 et seq., if the state proves that the offense was committed upon the property of a public school or in or upon any school bus; or

(B) Is found by a juvenile division of circuit court to have committed an offense described in subdivision (a)(1)(A) of this section.

(2) In a case of extreme and unusual hardship, the order may provide for the issuance of a restricted driving permit to allow driving to and from a place of employment or driving to and from school.

(b) Upon receipt of an order of denial of driving privileges under this section, the department shall suspend the motor vehicle operator's license of the person for not less than twelve (12) months nor more than thirty-six (36) months.

(c) A penalty prescribed in this section is in addition to any other penalty prescribed by law for an offense covered by this section.

### History

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Acts 1993, No. 264 §§ 1-3; 1993, No. 781, §§ 1-3.

# A.C.A. § 5-73-322

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 3 — Concealed Handguns](#)

### 5-73-322. Concealed handguns in a university, college, or community college building.

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(a)

(1) As used in this section, "public university, public college, or community college" means an institution that:

(A) Regularly receives budgetary support from the state government;

(B) Is part of the University of Arkansas or Arkansas State University systems; or

(C) Is required to report to the Arkansas Higher Education Coordinating Board.

(2) "Public university, public college, or community college" includes without limitation a public technical institute.

(3) "Public university, public college, or community college" does not include a private university or private college solely because:

(A) Students attending the private university or private college receive state-supported scholarships; or

(B) The private university or private college voluntarily reports to the board.

(b) A licensee who has completed the training required under subsection (g) of this section may possess a concealed handgun in the buildings and on the grounds of a public university, public college, or community college, whether owned or leased by the public university, public college, or community college, unless otherwise prohibited by this section or § 5-73-306.

(c)

(1) A licensee may possess a concealed handgun in the buildings and on the grounds of a private university or private college unless otherwise prohibited by this section or § 5-73-306 if the private university or private college does not adopt a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college.

(2)

(A) A private university or private college that adopts a policy expressly disallowing the carrying of a concealed handgun in the buildings and on the grounds of the private university or private college shall post notices as described in § 5-73-306(18).

(B) A private university or private college that adopts a policy only allowing carrying of a concealed handgun under this section shall post notices as described in § 5-73-306(18) and subdivision (c)(2)(C) of this section.

(C) If a private university or private college permits carrying a concealed handgun under this section, the private university or private college may revise any sign or notice required to be posted under § 5-73-306(18) to indicate that carrying a concealed handgun under this section is permitted.

(d) The storage of a handgun in a university or college-operated student dormitory or residence hall is prohibited under § 5-73-119(c).

(e)

(1) A licensee who may carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college under this section may not carry a concealed handgun into a location in which an official meeting lasting no more than nine (9) hours is being conducted in accordance with documented grievance and disciplinary procedures as established by the public university, public college, or community college if:

(A) At least twenty-four (24) hours' notice is given to participants of the official meeting;

(B) Notice is posted on the door of or each entryway into the location in which the official meeting is being conducted that possession of a concealed handgun by a licensee under this section is prohibited during the official meeting; and

(C) The area of a building prohibited under this subdivision (e)(1) is no larger than necessary to complete the grievance or disciplinary meeting.

(2) A person who knowingly violates subdivision (e)(1) of this section upon conviction is guilty of:

(A) A violation for a first offense and subject to a fine not exceeding one hundred dollars (\$100); and

(B) A Class C misdemeanor for a second or subsequent offense.

(f) This section does not affect a licensee's ability to store a concealed handgun in his or her vehicle under § 5-73-306(13)(B)(v).

(g)

(1) A licensee who intends to carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college is required to complete a training course approved by the Director of the Division of Arkansas State Police.

(2)

(A) Training required under this subsection shall:

(i) Not be required to be renewed;

(ii) Consist of a course of up to eight (8) hours;

(iii) Be offered at the training instructor's option at concealed carry training courses; and

(iv) Cost no more than a nominal amount.

(B) The director may waive up to four (4) hours of the training required under this subsection for a licensee based on the licensee's prior training attended within ten (10) years of applying for the endorsement provided for under subdivision (g)(3) of this section on appropriate topics.

(3) A licensee who completes a training course under this subsection shall be given a concealed carry endorsement by the Division of Arkansas State Police on his or her license to carry a concealed handgun indicating that the person is permitted to possess and carry a concealed handgun in the buildings and on the grounds of a public university, public college, or community college.

(h) A licensee who completes a training course and obtains a concealed carry endorsement under subsection (g) of this section is exempted from the prohibitions and restrictions on:

(1) Carrying a firearm in a publicly owned building or facility under § 5-73-122, if the firearm is a concealed handgun; and

(2) Carrying a concealed handgun in a prohibited place listed under § 5-73-306(7)-(12), (14), (15), and (17), unless otherwise prohibited under § 5-73-306(19) or § 5-73-306(20).

(i) The division shall maintain a list of licensees who have successfully completed a training course under subsection (g) of this section.

(j)

(1) Unless possession of a concealed handgun is a requirement of a licensee's job description, the possession of a concealed handgun under this section is a personal choice made by the licensee and not a requirement of the employing public university, public college, or community college.

(2) A licensee who possesses a concealed handgun in the buildings and on the grounds of a public university, public college, or community college at which the licensee is employed is not:

(A) Acting in the course of or scope of his or her employment when possessing or using a concealed handgun;

(B) Entitled to worker's compensation benefits for injuries arising from his or her own negligent acts in possessing or using a concealed handgun;

(C) Immune from personal liability with respect to possession or use of a concealed handgun; or

(D) Permitted to carry a concealed handgun openly or in any other manner in which the concealed handgun is visible to ordinary observation.

(3) A public university, public college, or community college is immune from a claim for monetary damages arising from or related to a licensee's use of, or failure to use, a concealed handgun if the licensee elects to possess a concealed handgun under this section.

## History

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# A.C.A. § 6-5-501

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Miscellaneous Provisions Relating to Elementary, Secondary, and Higher Education](#)
- [Subchapter 5 — Civil War Reenactments](#)

### 6-5-501. Definitions.

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As used in this subchapter:

- (1) "Civil War" means the 1861-1865 American Civil War;
- (2) "Civil War-era weapon" means an instrument used in offensive or defensive combat during the Civil War or a modern reproduction;
- (3) "Civil War reenactor" means a member of an organized group acting out historical events from the Civil War and carrying an actual weapon from that era or a reproduction;
- (4) "School official" means a public school district superintendent or principal, a private school superintendent or principal, a president, chancellor, or dean of a publicly supported institution of higher education, or a president or dean of a private institution of higher education; and
- (5) "School property" means any building, bus, campus, ground, recreational area, athletic field, or other area or structure owned or in the charge of a public school district, a private school, a publicly supported institution of higher education, or a private institution of higher education.

### History

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Acts 1995, No. 130, § 1.

## A.C.A. § 6-5-502

### Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Miscellaneous Provisions Relating to Elementary, Secondary, and Higher Education](#)
- [Subchapter 5 — Civil War Reenactments](#)

### **6-5-502. Weapons.**

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A person in this state who is a Civil War reenactor may carry a Civil War-era weapon on school property for educational purposes so long as a school official grants approval in advance and, if the weapon is a firearm, the firearm is unloaded.

### History

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Acts 1995, No. 130, § 2.

# A.C.A. § 6-10-128

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 2. Elementary and Secondary Education Generally](#)
- [Chapter 10 General Provisions](#)

### 6-10-128. School resource officers.

(a) A school district board of directors may accept from a local law enforcement agency with jurisdiction a school resource officer to assist with school security, safety, emergency preparedness, emergency response, or any other responsibility assigned to the school resource officer by the school or law enforcement agency.

(b) A school resource officer shall be a certified law enforcement officer and shall have statewide jurisdiction as described under § 16-81-118.

(c)

(1) A school district board of directors that accepts a school resource officer shall enter into a memorandum of understanding with the local law enforcement agency with jurisdiction, or adopt policies and procedures if the school district has an institutional law enforcement officer as described by § 6-13-1701 et seq., that governs the school resource officer and includes without limitation:

(A) The financial responsibilities of each party;

(B) The chain of command;

(C) The process for the selection of school resource officers;

(D) The process for the evaluation of school resource officers;

(E) The training requirements for school resource officers; and

(F) The roles and responsibilities of school resource officers, which shall include without limitation:

(i) Clarification of the school resource officer's involvement in student discipline;

(ii) The use of physical restraints or chemical sprays;

(iii) The use of firearms; and

(iv) Making arrests on the public school campus.

(2) The memorandum of understanding required under subdivision (c)(1) of this section shall be based on a model memorandum created by the Division of Elementary and Secondary Education and the Arkansas Center for School Safety of the Criminal Justice Institute, which shall include without limitation the requirements listed in subdivision (c)(1) of this section.

(3) The Division of Elementary and Secondary Education shall promulgate rules specifying how the adoption of a memorandum of understanding or policies and procedures shall be verified.

(d)

(1) Sworn, nonsupervisory law enforcement personnel, including without limitation school resource officers, who are assigned to a public school campus during the instructional day or employed by a public school district shall:

(A) Within eighteen (18) months of being assigned or employed by the public school district:

(i)

(a) Complete a forty-hour basic school resource officer training program developed and provided, or approved, by the Arkansas Center for School Safety of the Criminal Justice Institute.

(b) The training required under subdivision (d)(1)(A)(i)(a) of this section shall include without limitation:

(1) The roles and responsibilities of school resource officers in public schools;

(2) Laws that are specific to public schools and students in public schools; and

(3) Adolescent behavior and development; and

(ii)

(i) Attend a training in youth mental health as required by the State Board of Education.

(ii) The youth mental health training required under subdivision (d)(1)(A)(ii)(a) of this section shall be obtained every four (4) years if the school resource officer remains assigned to or employed by a public school district;

**(B)**

(i) Within five (5) years after receiving the initial basic school resource officer training program, complete a sixteen-hour school resource officer refresher training developed and provided, or approved, by the Arkansas Center for School Safety of the Criminal Justice Institute.

(ii) The school resource officer refresher training required under subdivision (d)(1)(B)(i) of this section shall be completed every five (5) years; and

**(C)**

(i) Annually complete twelve (12) hours of public school-specific continuing education developed and provided, or approved, by the Arkansas Center for School Safety of the Criminal Justice Institute.

(ii) The youth mental health training required under subdivision (d)(1)(A)(ii) of this section and the school resource officer refresher training required under subdivision (d)(1)(B) of this section shall count towards the twelve (12) hours of public school-specific continuing education required under subdivision (d)(1)(C)(i) of this section in the years during which the youth mental health and school resource officer refresher trainings are completed.

(2) A school resource officer who is assigned by a public school for only extracurricular activities is exempt from the training requirements under subdivision (d)(1) of this section.

**(e)**

(1) A public school district superintendent and public school principal who accept a school resource officer or employ an institutional law enforcement officer as defined by § 6-13-1701 shall complete a one-hour school resource officer roles and responsibilities training developed and provided, or approved, by the Arkansas Center for School Safety of the Criminal Justice Institute within nine (9) months of accepting or employing the school resource officer.

(2) Public school district personnel directly responsible for supervising a school resource officer shall complete a one-hour school resource officer roles and responsibilities training developed and provided, or approved, by the Arkansas Center for School Safety of the Criminal Justice Institute within one (1) year of accepting or employing the school resource officer and every two (2) years thereafter.

(3) Training received by a licensed educator under subdivisions (e)(1) and (2) of this section may count towards the professional development required for renewal of an educator's license by the Division of Elementary and Secondary Education Rules Governing Professional Development.

**(f)**

(1) The Arkansas Center for School Safety of the Criminal Justice Institute shall monitor compliance with the continuing education and training requirements under this section.

(2) A school resource officer who fails to complete any training required under this section shall be unable to serve as a school resource officer until the training required under this section is complete.

(3) A school resource officer shall not be assigned to a public school district or a public school in which the public school district superintendent or public school principal has not completed the training required under this section.

## History

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Acts 2015, No. 1179, § 1; 2021, No. 551, § 1; 2021, No. 622, § 1; 2023, No. 237, § 2.

# A.C.A. § 6-10-134

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 2. Elementary and Secondary Education Generally](#)
- [Chapter 10 General Provisions](#)

### **6-10-134. Notification to school district of adjudication or conviction of minor — Confidentiality — Definition.**

---

(a) For the purposes of this section, "minor" means a:

- (1) Child who is under eighteen (18) years of age; or
- (2) Person who is eighteen (18) years of age or older and a student in a public secondary school.

(b) Upon receiving a written request, a court may provide information concerning the disposition of a minor who has been adjudicated delinquent or convicted of a criminal offense to the school superintendent or the designee of the school superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(c) A prosecuting attorney shall notify the school superintendent or the designee of the school superintendent of the school district to which a minor transfers, in which the minor is enrolled, or from which the minor receives services if the minor is adjudicated delinquent for or convicted of:

- (1) An offense involving a deadly weapon under § 5-1-102;
- (2) Kidnapping under § 5-11-102;
- (3) Battery in the first degree under § 5-13-201;
- (4) Sexual indecency with a child under § 5-14-110;
- (5) First, second, third, or fourth degree sexual assault under § 5-14-124, § 5-14-125, § 5-14-126, or § 5-14-127; or
- (6) The unlawful possession of a handgun under § 5-73-119.

(d) Information provided under subsections (b) and (c) of this section shall not be released in violation of any state or federal law protecting the privacy of the minor.

(e)

(1) An arresting agency shall orally notify the superintendent or the designee of the superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services of the arrest or detention of the minor for one (1) or more of the following offenses:

- (A) An offense involving a deadly weapon under § 5-1-102;
- (B) Kidnapping under § 5-11-102;
- (C) Battery in the first degree under § 5-13-201;
- (D) Sexual indecency with a child under § 5-14-110;
- (E) First, second, third, or fourth degree sexual assault under §§ 5-14-124 — 5-14-127; or
- (F) The unlawful possession of a handgun under § 5-73-119.

(2) The notice required under subdivision (e)(1) of this section shall be provided within twenty-four (24) hours of the arrest or detention of the minor or before the next school day, whichever is earlier.

(3)

(A) The superintendent of the school district in which the minor is enrolled or from which the minor receives services shall then immediately notify:

- (i) The principal of the school;
- (ii) The resource officer of the school; and
- (iii) Any other school official with a legitimate educational interest in the minor.

(B) The arrest information shall:

- (i) Be treated as confidential information; and
- (ii) Not be disclosed by the superintendent or the designee of the superintendent to any person other than a person listed in subdivision (e)(3)(A) of this section.

(C) A person listed in subdivision (e)(3)(A) of this section who is notified of the arrest or detention of a minor by the superintendent or the designee of the superintendent shall maintain the confidentiality of the information he or she receives.

(4) The arrest information shall be used by the school only for the limited purpose of obtaining services for the minor or to ensure school safety.

(f) Records of the arrest of, the detention of, investigation of, or proceedings involving a minor are confidential and are not subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:

(1) Authorized by a written order of the juvenile division of circuit court;

(2) The arrest or the proceedings result in the minor being formally charged in the criminal division of circuit court for a felony; or

(3) As allowed under this section or § 9-27-320.

(g)

(1) Information regarding the arrest or detention of a minor and proceedings related to the arrest or detention of the minor shall be confidential unless the exchange of information is:

(A) For the purpose of obtaining services for the minor or to ensure school safety;

(B) Reasonably necessary to achieve one (1) or both purposes; and

(C) Under a written order by the circuit court.

(2) Information regarding the arrest or detention of a minor may be given only to the following persons:

(A) A school counselor;

(B) A juvenile court probation officer or caseworker;

(C) A law enforcement officer;

(D) A spiritual representative designated by the minor or his or her parents or legal guardian;

(E) A Department of Human Services caseworker;

(F) A community-based provider designated by the court, the school, or the parent or legal guardian of the minor;

(G) A Department of Health representative;

(H) The minor's attorney or other court-appointed special advocate; or

(I)

(i) A school superintendent or the designee of the superintendent of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(ii) A school superintendent or the designee of the superintendent of the school district in which the minor is enrolled or from which the minor receives services shall immediately notify the following persons of information he or she obtains under subdivision (g)(1) of this section:

(a) The principal of the school;

(b) The resource officer of the school; and

(c) Any other school official with a legitimate educational interest in the minor.

(3) A person listed in subdivision (g)(2) of this section may meet to exchange information, to discuss options for assistance to the minor, to develop and implement a plan of action to assist the minor, and to ensure school safety.

(4) The minor and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (g)(2) of this section when three (3) or more individuals meet to discuss assistance for the minor or the protection of the school due to the behavior of the minor.

(5) Medical records, psychiatric records, psychological records, and related information shall remain confidential unless the minor's parent or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (g)(2) of this section and the purpose for the disclosure.

(6) A person listed in subdivision (g)(2) of this section who exchanges any information referred to in this section may be held civilly liable for disclosure of the information if the person does not comply with the limitations set forth in this section.

(h)

(1) When a court orders a safety plan for a minor that restricts or requires supervised contact with another minor as it relates to student or school safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student safety be provided to the school superintendent, the designee of the superintendent, and the principal of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(2) When a court order amends or removes any safety plan outlined in subdivision (h)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan, as it relates to student safety, be provided to the school superintendent, or his or her designee, and the principal of the school district to which the minor transfers, in which the minor is enrolled, or from which the minor receives services.

(3) A school official who receives a court order and safety plan or information concerning the court order and safety plan shall:

(A) Keep the information confidential and shall sign a statement not to disclose the information concerning the court order and safety plan that shall be kept by the superintendent or principal along with the court order and safety plan;

(B) Keep the information confidential and shall not disclose the information to a person not listed in subdivision (g)(2) of this section;

(C) Include the information in the permanent educational records of the minor; and

(D)

(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(ii) A school official shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(iii) However, the local education agency shall not under any circumstance release, disclose, or make available for inspection to the public, any college, university, institution of higher education, vocational or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record of the minor.

(4) When a minor attains an age that he or she is no longer under the jurisdiction of the juvenile division of circuit court, the safety plan and the order regarding the safety plan shall be removed from the permanent records of the minor at the local education agency and destroyed.

## History

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Acts 2019, No. 647, § 1.

# A.C.A. § 6-17-113

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 2. Elementary and Secondary Education Generally](#)
- [Chapter 17 Personnel](#)
- [Subchapter 1 — General Provisions](#)

### **6-17-113. Duty to report and investigate student criminal acts — Definitions.**

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(a) As used in this section:

(1) "Act of violence" means any violation of Arkansas law where a person purposely or knowingly causes or threatens to cause death or serious physical injury to another person;

(2) "Deadly weapon" means:

(A) A firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious physical injury; or

(B) Anything that in the manner of its use or intended use is capable of causing death or serious physical injury; and

(3) "Firearm" means any device designed, made, or adapted to expel a projectile by the action of an explosive or any device readily convertible to that use, including such a device that is not loaded or lacks a clip or other component to render it immediately operable, and components that can readily be assembled into such a device.

(b)

(1) Whenever the principal or other person in charge of a public school has personal knowledge or has received information leading to a reasonable belief that any person has committed or has threatened to commit an act of violence or any crime involving a deadly weapon on school property or while under school supervision, the principal or the person in charge shall immediately report the incident or threat to the superintendent of the school district and the appropriate local law enforcement agency.

(2) The report shall be by telephone or in person immediately after the incident or threat and shall be followed by a written report within three (3) business days.

(3) The principal shall notify any school employee or other person who initially reported the incident that a report has been made to the appropriate law enforcement agency.

(4) The superintendent or his or her designee shall notify the local school district board of directors of any report made to law enforcement under this section.

(c)

(1) Whenever a law enforcement officer receives a report of an incident pursuant to subsection (b) of this section, that officer shall immediately report the incident to the office of the prosecuting attorney and shall immediately initiate an investigation of the incident.

(2) The investigation shall be conducted with all reasonable haste and, upon completion, shall be referred to the prosecuting attorney.

(3)

(A) The prosecuting attorney shall implement the appropriate course of action and, within thirty (30) calendar days after receipt of the file, the prosecuting attorney shall provide a written report to the principal.

(B) The report shall state:

(i) Whether the investigation into the reported incident is ongoing;

(ii) Whether any charges have been filed in either circuit court or the juvenile division of circuit court as a result of the reported incident; and

(iii) The disposition of the case.

(4) Upon receipt of the report from the prosecuting attorney, the principal shall notify any school employee or any other person who initially reported the incident that a report has been received from the prosecuting attorney.



- (d) Excluding the reporting requirement set out in subdivision (c)(3) of this section, any person who purposely fails to report as required by this section shall be guilty of a Class C misdemeanor.
- (e) The State Board of Education shall promulgate rules to ensure uniform compliance with the requirements of this section and shall consult with the office of the Attorney General concerning the development of these rules.

## History

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Acts 1995, No. 888, § 1; 1997, No. 1243, § 1; 1999, No. 1520, § 1; 2019, No. 315, § 223.

# A.C.A. § 6-18-502

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 2. Elementary and Secondary Education Generally](#)
- [Chapter 18 Students](#)
- [Subchapter 5 — Discipline](#)

### **6-18-502. Rules for development of school district student discipline policies.**

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- (a) The Division of Elementary and Secondary Education shall establish rules for the development of school district student discipline policies.
- (b) Such rules shall include without limitation the following requirements:
- (1) Parents, students, and school district personnel, including teachers, shall be involved in the development of school district student discipline policies;
- (2)
- (A) The school district's committee on personnel policies shall review annually:
- (i) The school district's student discipline policies; and
- (ii) State and district discipline data.
- (B) The committee may recommend changes in the policies to the board of directors of the local school district based on the committee's review under subdivision (b)(2)(A) of this section; and
- (3) Student discipline policies shall include without limitation the following offenses:
- (A) Willfully and intentionally assaulting or threatening to assault or abuse any student or teacher, principal, superintendent, or other employee of a school system;
- (B) Possession by students of any firearm or other weapon prohibited upon the school campus by law or by policies adopted by the school district board of directors;
- (C) Using, offering for sale, or selling beer, alcoholic beverages, or other illicit drugs by students on school property; and
- (D) Willfully or intentionally damaging, destroying, or stealing school property by students.
- (c) The school discipline policies shall:
- (1)
- (A) Prescribe minimum and maximum penalties, including without limitation students' suspension or expulsion from school, for violations of any of the offenses described in subdivision (b)(3) of this section and for violations of other practices prohibited by school discipline policies.
- (B) However, the superintendent shall have discretion to modify the prescribed penalties for a student on a case-by-case basis;
- (2)
- (A) Prescribe expulsion from school for a period of one (1) year for possession of any firearm or other weapon prohibited upon the school campus by law.
- (B) Provided, however, that the superintendent shall have discretion to modify such expulsion requirement for a student on a case-by-case basis;
- (3) Establish procedures for notice to students and parents of charges, hearings, and other due process proceedings to be applicable in the enforcement and administration of such policies by the school administrator and by the school district board of directors;
- (4) Include prevention, intervention, and conflict resolution provisions;
- (5) Set forth the role and authority of public school employees and volunteers as provided in this subchapter;
- (6) Include programs, measures, or alternative means and methods to continue student engagement and access to education during periods of suspension or expulsion; and
- (7) Establish procedures for responding to reports received through the school safety and crisis line under § 6-18-111.

- (d) Student discipline policies shall provide that parents and students will be advised of the rules and regulations by which the school is governed and will be made aware of the behavior that will call for disciplinary action and the types of corrective actions that may be imposed.
- (e) Each school district shall develop a procedure for written notification to all parents and students of the district's student discipline policies and for documentation of the receipt of the policies by all parents and students.
- (f) Teachers and administrators, classified school employees, and volunteers shall be provided with appropriate student discipline, behavioral intervention, and classroom management training and support.
- (g) If a school employee believes that any action taken by the school district to discipline a student referred by that employee does not follow school district discipline policies, the school employee may appeal under the district's grievance procedure as provided under § 6-17-208.
- (h) In developing the state rules for school district discipline policies, the division shall involve parents, students, teachers, and administrators.

## History

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Acts 1983 (1st Ex. Sess.), No. 77, § 1; 1983 (1st Ex. Sess.), No. 104, § 1; A.S.A. 1947, § 80-1629.6; Acts 1989, No. 146, § 1; 1995, No. 567, § 1; 1995, No. 968, § 1; 1997, No. 706, § 1; 1999, No. 1475, §§ 2, 3; 2001, No. 447, § 1; 2013, No. 71, § 1; 2019, No. 640, §§ 1-4; 2019, No. 910, §§ 1530, 1531; 2019, No. 1064, § 3.

# A.C.A. § 6-18-507

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 2. Elementary and Secondary Education Generally](#)
- [Chapter 18 Students](#)
- [Subchapter 5 — Discipline](#)

### 6-18-507. Suspension — Expulsion — Definitions.

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(a) As used in this section:

- (1) "Course time" means the number of hours of instruction devoted to a single subject during the school week;
- (2) "Expulsion" means dismissal from school for a period of time that exceeds ten (10) days;
- (3) "Nontraditional scheduling" means block or other alternative scheduling as defined by the Division of Elementary and Secondary Education; and
- (4) "Suspension" means dismissal from school for a period of time that does not exceed ten (10) days.

(b)

- (1) The board of directors of a school district may suspend or expel any student from school for violation of the school district's written discipline policies, except that a school district shall not use out-of-school suspension as a discipline measure for truancy.
- (2) The school district shall not use out-of-school suspension or expulsion for a student in kindergarten through grade five (K-5) except in cases when a student's behavior:
  - (A) Poses a physical risk to himself or herself or to others; or
  - (B) Causes a serious disruption that cannot be addressed through other means.

(c)

(1)

- (A) The board of directors may authorize a teacher or an administrator to suspend any student for a maximum of ten (10) school days for violation of the school district's written discipline policies, subject to appeal to the superintendent or his or her designee.
- (B) However, schools that utilize nontraditional scheduling may not suspend students from more course time than would result from a ten-day suspension under the last traditional schedule used by the school district.

(2) If the superintendent initiates the suspension process, the decision may be appealed to the board of directors.

(d)

- (1) A superintendent may recommend the expulsion of a student for more than ten (10) days for violation of the school district's written discipline policies, subject to appeal to the board of directors and to requirements of the Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq.

(2)

(A) After hearing all testimony and debate on a suspension, expulsion, or appeal, the board of directors may consider its decision in executive session without the presence of anyone other than the board members.

(B) At the conclusion of an executive session, the board of directors shall reconvene in public session to vote on the suspension, expulsion, or appeal.

(3) A school district board of directors meeting entertaining an appeal shall be conducted in executive session if requested by the parent or guardian of the student provided that after hearing all testimony and debate, the board of directors shall conclude the executive session and reconvene in public session to vote on such appeal.

(e)

(1)

(A) All school districts shall adopt a written policy regarding expulsion of a student for possessing a firearm or other prohibited weapon on school property that shall require parents, guardians, or other persons in loco parentis of a student expelled under this subsection to sign a statement acknowledging that the parents have read and understand current laws regarding the possibility of parental responsibility for allowing a child to possess a weapon on school property.

(B) The statement shall be signed by the parents, guardians, or other persons in loco parentis before readmitting a student or enrolling a student in any public school immediately after the expiration of an expulsion period pursuant to this subsection.

(2)

(A) The school administrators and the local school district board of directors shall complete the expulsion process of any student that was initiated because the student possessed a firearm or other prohibited weapon on school property regardless of the enrollment status of the student.

(B) The principal of each school shall report within a week to the division the name, current address, and Social Security number of any student who is expelled for possessing a firearm or other prohibited weapon on school property or for committing other acts of violence.

(C) The expulsion shall be noted on the student's permanent school record.

(D) Nothing in this subdivision (e)(2) shall be construed to limit a superintendent's discretion to modify the expulsion requirement for a student on a case-by-case basis as set out in this subsection.

(3) The division shall maintain information regarding students who are expelled for possessing a firearm or other prohibited weapon on school property or for committing other acts of violence.

(f)

(1) Upon suspension of a student, the school shall immediately contact the student's parent or legal guardian to notify the parent or legal guardian of the suspension.

(2) Each parent or legal guardian shall provide the school:

(A)

(i) A primary call number.

(ii) If the call number changes, the parent or legal guardian shall notify the school of the new primary call number;

(B) An email address if the parent or legal guardian does not have a telephone; or

(C) A current mailing address if the parent or legal guardian does not have a telephone or email address.

(3) The contact required in this subsection is sufficient if made by:

(A) Direct contact with the parent or legal guardian at the primary call number or in person;

(B) Leaving a voice mail at the primary call number;

(C) Sending a text message to the primary call number;

(D) Email if the school is unable to make contact through the primary call number; or

(E) Regular first-class mail if the school is unable to make contact through the primary call number or email.

(4) The school shall keep a notification log of contacts attempted and made to the parent or legal guardian.

(g) A public school shall indicate on a student's attendance record if a student's absence is the result of an out-of-school suspension.

(h) [Repealed.]

## History

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Acts 1931, No. 169, § 170; Pope's Dig., § 11612; Acts 1979, No. 441, § 1; A.S.A. 1947, § 80-1516; Acts 1995, No. 567, § 3; 1997, No. 742, § 1; 1999, No. 1150, § 1; 2007, No. 159, § 1; 2009, No. 1445, § 1; 2013, No. 1329, §§ 2, 3; 2017, No. 1059, § 1; 2019, No. 640, §§ 10, 11; 2019, No. 709, § 2; 2019, No. 910, §§ 1537-1539; 2023, No. 724, § 2.

# A.C.A. § 6-21-608

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 6 Education](#)
- [Subtitle 2. Elementary and Secondary Education Generally](#)
- [Chapter 21 School Property and Supplies](#)
- [Subchapter 6 — Miscellaneous Offenses](#)

### 6-21-608. Concealment of guns or drugs — Definitions.

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(a) As used in this section:

(1) "School official" means any public school employee receiving compensation for services from any public school system in the State of Arkansas;

(2) "School-owned property" means any property located among premises owned in whole or in part by the state or any city, district, or county within the state, including but not limited to any desk, locker, file, or other tangible property assigned to, for the use of, or on loan to any student or other person using the property for his or her own use;

(3) "School premises" means any locale upon which is situated any school building; and

(4) "Supervisor" means any person who is employed as administrator or supervisor of any public school.

(b) It shall be unlawful for any student or any other person using school-owned property to conceal any gun, drug, or any other contraband in any desk, locker, or other school-owned property in this state.

(c)

(1) Any school official employed in a supervisory capacity over students or other persons on school premises, upon receipt of information that guns, drugs, or other contraband are concealed in school-owned property, shall have the authority to investigate and search any school-owned property for any drugs, guns, or other contraband that may be concealed in the school-owned property, without the necessity of obtaining a search warrant from local authorities.

(2) In the event that contraband is discovered, it shall be seized and held by the supervisor of the school premises until appropriate action, as described in subsection (d) of this section, is taken.

(d)

(1) Whenever a school official discovers any illegal drugs or other contraband in any school-owned property assigned to the use of an identifiable student or any other identifiable person, appropriate action for discipline, expulsion, discharge, or prosecution shall be within the discretion of the supervisor of the premises.

(2)

(A) In the event that prosecution by local authorities is pursued, the supervisor shall release the contraband to the local prosecuting authorities to be used as evidence in court.

(B) Any evidence obtained by use of the procedure as defined in this section shall be legally admissible in any court in this state.

(e)

(1)

(A) If a school official discovers a gun or other firearm in any school-owned property assigned to the use of an identifiable student, that student shall be expelled for one (1) year.

(B) Provided, however, that the superintendent shall have discretion to modify such expulsion requirement for a student on a case-by-case basis.

(2) In the event that prosecution by local authorities is pursued, the gun or other firearm shall be released to the local prosecuting authorities to be used as evidence in court and shall be legally admissible in any court in this state.

## History

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Acts 1975, No. 259, §§ 1, 2; A.S.A. 1947, §§ 80-1916, 80-1917; Acts 1995, No. 567, § 4; 1995, No. 1296, § 29; 2021, No. 544, § 51.

# A.C.A. § 9-27-309

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 9 Family Law](#)
- [Subtitle 3. Minors](#)
- [Chapter 27 Juvenile Courts and Proceedings](#)
- [Subchapter 3 — Arkansas Juvenile Code](#)

### 9-27-309. Confidentiality of records — Definition.

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(a) All records may be closed and confidential within the discretion of the circuit court, except:

(1) Adoption records, including any part of a dependency-neglect record that includes adoption records, shall be closed and confidential as provided in the Revised Uniform Adoption Act, § 9-9-201 et seq.;

(2) Records of delinquency adjudications for which a juvenile could have been tried as an adult shall be made available to prosecuting attorneys for use at sentencing if the juvenile is subsequently tried as an adult or to determine if the juvenile should be tried as an adult; and

(3) The Administrative Office of the Courts shall provide the Arkansas Crime Information Center with records of delinquency adjudications for a juvenile adjudicated delinquent for an offense for which juvenile fingerprints shall be taken under § 9-27-320.

(b)

(1)

(A) Records of delinquency adjudications for a felony involving violence as defined under § 5-4-501 shall be kept for ten (10) years after the last adjudication of delinquency or the date of a plea of guilty or nolo contendere or a finding of guilt as an adult.

(B) Thereafter they may be expunged.

(2) The court may expunge other juvenile records at any time and shall expunge all the records of a juvenile upon his or her twenty-first birthday, in other types of delinquency, dependency-neglect, or families in need of services cases.

(3) For purposes of this section, “expunge” means to destroy.

(c) Records of juveniles who are designated as extended juvenile jurisdiction offenders shall be kept for ten (10) years after the last adjudication of delinquency, date of plea of guilty or nolo contendere, or finding of guilt as an adult or until the juvenile's twenty-first birthday, whichever is longer.

(d)

(1) If an adult criminal sentence is imposed on an extended juvenile jurisdiction offender, the record of that case shall be considered an adult criminal record.

(2)

(A) The court shall enter an order transferring the juvenile record to the clerk who is the custodian of adult criminal records.

(B) The clerk shall assign a criminal docket number and shall maintain the file as if the case had originated as a criminal case.

(e) This section does not apply to nor restrict the use or publication of statistics, data, or other materials that summarize or refer to any records, reports, statements, notes, or other information in the aggregate and that do not refer to or disclose the identity of any juvenile defendant in any proceeding when used only for the purpose of research and study.

(f) This subchapter does not preclude prosecuting attorneys or the court from providing information, upon written request, concerning the disposition of a juvenile who has been adjudicated delinquent to:

(1) The victim or his or her next of kin; or

(2) The school superintendent of the school district or the designee of the school superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.



- (g) The prosecuting attorney shall notify the school superintendent or the designee of the school superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services if the juvenile is adjudicated delinquent for:
- (1) An offense for which the juvenile could have been charged as an adult;
  - (2) An offense involving a deadly weapon under § 5-1-102;
  - (3) Kidnapping under § 5-11-102;
  - (4) Battery in the first degree under § 5-13-201;
  - (5) Sexual indecency with a child under § 5-14-110;
  - (6) First, second, third, or fourth degree sexual assault under §§ 5-14-124 — 5-14-127; or
  - (7) The unlawful possession of a handgun under § 5-73-119.
- (h) Information provided pursuant to subsections (f) and (g) of this section shall not be released in violation of any state or federal law protecting the privacy of the juvenile.
- (i)
- (1) If a juvenile is arrested for unlawful possession of a firearm under § 5-73-119, an offense involving a deadly weapon under § 5-1-102, or battery in the first degree under § 5-13-201, the arresting agency shall orally notify the superintendent or the designee of the superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services of the offense for which the juvenile was arrested or detained within twenty-four (24) hours of the arrest or detention or before the next school day, whichever is earlier.
- (2)
- (A) The superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services shall then immediately notify:
    - (i) The principal of the school;
    - (ii) The resource officer of the school; and
    - (iii) Any other school official with a legitimate educational interest in the juvenile.
  - (B) The arrest information shall:
    - (i) Be treated as confidential information; and
    - (ii) Not be disclosed by the superintendent or the designee of the superintendent to any person other than a person listed in subdivision (i)(2)(A) of this section.
  - (C) A person listed in subdivision (i)(2)(A) of this section who is notified of the arrest or detention of a juvenile by the superintendent or the designee of the superintendent shall maintain the confidentiality of the information he or she receives.
- (3) The arrest information shall be used by the school only for the limited purpose of obtaining services for the juvenile or to ensure school safety.
- (j) Records of the arrest of a juvenile, the detention of a juvenile, proceedings under this subchapter, and the records of an investigation that is conducted when the alleged offender is an adult and relates to an offense that occurred when the alleged offender was a juvenile shall be confidential and shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., unless:
- (1) Authorized by a written order of the juvenile division of circuit court;
  - (2) The arrest or the proceedings under this subchapter result in the juvenile's being formally charged in the criminal division of circuit court for a felony; or
  - (3) As allowed under this section or § 9-27-320.
- (k) Information regarding the arrest or detention of a juvenile and related proceedings under this subchapter shall be confidential unless the exchange of information is:
- (1) For the purpose of obtaining services for the juvenile, to ensure school safety, or to ensure public safety;
  - (2) Reasonably necessary to achieve one (1) or more purposes; and
  - (3) Under a written order by the circuit court.
- (l)
- (1) The information may be given only to the following persons:
    - (A) A school counselor;
    - (B) A juvenile court probation officer or caseworker;
    - (C) A law enforcement officer;
    - (D) A spiritual representative designated by the juvenile or his or her parents or legal guardian;
    - (E) A Department of Human Services caseworker;
    - (F) A community-based provider designated by the court, the school, or the parent or legal guardian of the juvenile;
    - (G) A Department of Health representative;
    - (H) The juvenile's attorney ad litem or other court-appointed special advocate; or

**(l)**

(i) A school superintendent or the designee of the superintendent of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(ii) A school superintendent or the designee of the superintendent of the school district in which the juvenile is enrolled or from which the juvenile receives services shall immediately notify the following persons of information he or she obtains under subsection (k) of this section:

(a) The principal of the school;

(b) The resource officer of the school; and

(c) Any other school official with a legitimate educational interest in the juvenile.

(2) The persons listed in subdivision (l)(1) of this section may meet to exchange information, to discuss options for assistance to the juvenile, to develop and implement a plan of action to assist the juvenile, to ensure school safety, and to ensure public safety.

(3) The juvenile and his or her parent or legal guardian shall be notified within a reasonable time before a meeting and may attend any meeting of the persons referred to in subdivision (l)(1) of this section when three (3) or more individuals meet to discuss assistance for the juvenile or protection of the public due to the juvenile's behavior.

(4) Medical records, psychiatric records, psychological records, and related information shall remain confidential unless the juvenile's parent or legal guardian waives confidentiality in writing specifically describing the records to be disclosed between the persons listed in subdivision (l)(1) of this section and the purpose for the disclosure.

(5) Persons listed in subdivision (l)(1) of this section who exchange any information referred to in this section may be held civilly liable for disclosure of the information if the person does not comply with limitations set forth in this section.

**(m)**

(1) When a court orders that a juvenile have a safety plan that restricts or requires supervised contact with another juvenile or juveniles as it relates to student or school safety, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan concerning student or school safety be provided to the school superintendent and principal of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

(2) When a court order amends or removes any safety plan outlined in subdivision (m)(1) of this section, the court shall direct that a copy of the safety plan and a copy of the court order regarding the safety plan, as it relates to student or school safety, be provided to the school superintendent and principal of the school district to which the juvenile transfers, in which the juvenile is enrolled, or from which the juvenile receives services.

**(3)**

(A) The superintendent or principal of the school district in which the juvenile is enrolled or from which the juvenile receives services shall provide verbal notification only to school officials who are necessary to implement the safety plan as ordered by the court to ensure student safety.

(B) This verbal notification may only be provided to assistant principals, counselors, resource officers, and the school employees who are primarily responsible for the supervision of the juvenile or responsible for the learning environment of the juvenile in the school district in which the juvenile is enrolled or from which the juvenile receives services, and to bus drivers, if applicable.

(4) Any school officials that receive a court order and safety plan or information concerning the court order and safety plan shall:

(A) Keep the information confidential and shall sign a statement not to disclose the information concerning the court order and safety plan that shall be kept by the superintendent or principal along with the court order and safety plan;

(B) Keep the information confidential and shall not disclose the information to any person not listed in subdivision (l)(1) of this section;

(C) Include the information in the juvenile's permanent educational records; and

**(D)**

(i) Treat the information and documentation contained in the court order as education records under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(ii) A school official shall not release, disclose, or make available the information and documentation contained in the court order for inspection to any party except as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

(iii) However, the local education agency shall not under any circumstance release, disclose, or make available for inspection to the public, any college, university, institution of higher education, vocational

or trade school, or any past, present, or future employer of the student the court order or safety plan portion of a student record.

(5) When a student attains an age that he or she is no longer under the jurisdiction of the juvenile division of circuit court, the safety plan and the order regarding the safety plan shall be removed from the juvenile's permanent records at the local education agency and destroyed.

## History

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Acts 1989, No. 273, § 8; 1993, No. 535, § 3; 1993, No. 551, § 3; 1993, No. 758, § 4; 1994 (2nd Ex. Sess.), No. 69, § 1; 1994 (2nd Ex. Sess.), No. 70, § 1; 1999, No. 1192, § 13; 1999, No. 1451, § 1; 2001, No. 1268, § 1; 2003, No. 1166, § 6; 2009, No. 956, § 8; 2015, No. 1016, §§ 1, 2; 2017, No. 891, § 1; 2019, No. 647, §§ 25; 2023, No. 271, § 1.

# A.C.A. § 5-5-101

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 1 — General Provisions](#)

### 5-5-101. Disposition of contraband and seized property.

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(a) Any seized property shall be returned to the rightful owner or possessor of the seized property except contraband owned by a defendant.

(b)

(1) As used in this section, "contraband" means any:

(A) Article possessed under a circumstance prohibited by law;

(B) Weapon or other instrument used in the commission or attempted commission of a felony;

(C) Visual, print, or electronic medium that depicts sexually explicit conduct involving a child prohibited under § 5-27-304;

(D) Visual, print, or electronic medium that contains a sexual performance of a child prohibited under § 5-27-403;

(E) Item the possession of which is prohibited by § 5-27-602;

(F) Item the production of which is prohibited by § 5-27-603;

(G) Item the production of which is prohibited by § 5-27-605; or

(H) Other article designated "contraband" by law.

(2) "Contraband" does not include a visual, a print, or an electronic medium created, obtained, or possessed by licensed medical personnel or a regulated medical facility for the purpose of treatment or documentation of injuries to a child.

(c)

(1) Contraband shall be destroyed.

(2) Except as limited under subdivision (c)(3) of this section, in the discretion of the court having jurisdiction, any contraband capable of lawful use may be:

(A) Retained for use by the law enforcement agency responsible for the arrest;

(B) Sold and the proceeds disposed of in the manner provided by subsections (e)-(g) of this section; or

(C) Traded to a federally licensed firearms dealer as provided by subsection (h) of this section.

(3) Contraband described in subdivisions (b)(1)(C)-(H) of this section and having no lawful use shall not be retained.

(d)

(1)

(1) Except as provided in subdivision (d)(2) or subsection (h) of this section, unclaimed seized property shall be sold at public auction to be held by the chief law enforcement officer of the county, city, or town law enforcement agency that seized the unclaimed seized property or the chief law enforcement officer's designee.

(2) The proceeds of the sale, less the cost of the sale and any storage charge incurred in preserving the unclaimed seized property, shall be paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.

(2)

(A) Unclaimed seized property that is a recreational item may be donated at no cost to a local or state agency, a nonprofit organization, or an educational program designed to provide education, assistance, or recreation to children.

(B)

(i) As used in subdivision (d)(2)(A) of this section, "recreational item" means an item generally used for children's activities and play.

- (ii) "Recreational item" includes without limitation a bicycle but does not include a motor vehicle or motorcycle.
- (e) The time and place of sale of seized property shall be advertised:
  - (1) For at least fourteen (14) days next before the day of sale by posting written notice at the courthouse door; and
  - (2) By publication in the form of at least two (2) insertions, at least three (3) days apart, before the day of sale in a weekly or daily newspaper published or customarily distributed in the county.
- (f)
  - (1) Any seized property to be sold at public sale shall be offered for sale on the day for which it was advertised between 9:00 a.m. and 3:00 p.m., publicly, by auction, and for ready money.
  - (2) The highest bidder shall be the purchaser.
- (g)
  - (1) The proceeds from any sale of seized property shall be delivered to the county, city, or town treasurer, as the case may be, to be held by him or her in a separate account for a period of three (3) months.
  - (2) If any person during the time described in subdivision (g)(1) of this section establishes to the satisfaction of the county, city, or town treasurer that he or she was at the time of sale the owner of any seized property sold as provided in subsection (f) of this section, the person shall be paid the amount realized from sale of the seized property less the expenses of the sale.
  - (3) Any money in the separate account not claimed or paid within the designated three-month period shall be paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.
- (h)
  - (1) A law enforcement agency to which contraband or unclaimed seized property that is a firearm is forfeited may trade the firearm to a federally licensed firearms dealer for credit toward future purchases by the law enforcement agency.
  - (2) If the firearm is unable to be traded to a federally licensed firearms dealer, the law enforcement agency may dispose of the firearm as the law enforcement agency deems appropriate.
- (i)
  - (1) A law enforcement agency disposing of contraband or seized property under this section shall maintain a written report that includes without limitation:
    - (A) A list and description, including without limitation a serial number, of all property disposed, traded for credit, or sold at auction;
    - (B) The dollar amount of any credit obtained by the law enforcement agency and the contact information for the federally licensed dealer with which the credit is held;
    - (C) The dollar amount of any funds received at auction and where the funds were deposited; and
    - (D) An explanation for any credit used, including without limitation a description of items purchased with the credit and the dollar amount of the purchase.
  - (2) The written report required under subdivision (i)(1) of this section shall be provided:
    - (A) To the elected body that oversees the finances and operations of the law enforcement agency; and
    - (B) Within thirty (30) days of:
      - (i) The date a firearm or item of contraband is traded to a federally licensed dealer by a law enforcement agency; and
      - (ii) The date a credit with a federally licensed dealer is used by the law enforcement agency.

## History

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Acts 1975, No. 280, § 1401; 1977, No. 360, § 4; A.S.A. 1947, § 41-1401; Acts 1991, No. 1030, § 1; 2003, No. 135, § 1; 2007, No. 703, §§ 1, 2; 2009, No. 748, § 5; 2011, No. 171, § 1; 2023, No. 412, §§ 1-3.

# A.C.A. § 5-5-201

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 2 — Forfeiture of Conveyances Used in Commission of Certain Crimes](#)

### **5-5-201. Forfeiture requirement — Exceptions.**

(a) Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel, is subject to forfeiture under this subchapter if it is used in the commission or attempt of:

- (1) A burglary;
  - (2) A robbery;
  - (3) A theft;
  - (4) An arson; or
  - (5) Trafficking of persons, § 5-18-103.
- (b) However:

(1) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this subchapter unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission or attempt to commit the offense;

(2) A conveyance is not subject to forfeiture under this subchapter by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent and without the knowledge or consent of any person having possession, care, or control of the conveyance with the owner's permission; and

(3) A forfeiture of a conveyance encumbered by a security interest is subject to the security interest of the secured party if the secured party neither had knowledge of nor consented to the use of the conveyance in the commission or attempt to commit the offense.

(c)

(1) A person who uses or possesses one (1) or more of the following items or conveyances in the commission of a second or subsequent offense for criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, that occurs within five (5) years of a prior offense of criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, is subject to that item's or conveyance's being seized and forfeited under this subchapter:

- (A) An all-terrain vehicle, as defined under § 27-21-102;
- (B) A conveyance, including an aircraft, motor vehicle, or vessel;
- (C) A harvesting device, as defined under § 5-39-101;
- (D) A killing device, as defined under § 5-39-101; or
- (E) A tool or other implement.

(2) A person or entity that has a valid security interest in an item or conveyance subject to seizure and forfeiture under this subsection is entitled to notice of any forfeiture proceeding as well as the right to intervene in the forfeiture proceeding in order to secure and represent the person's or entity's interest in the item or conveyance to be forfeited.

## History

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Acts 1985, No. 238, § 1; A.S.A. 1947, § 41-1403; Acts 2013, No. 1157, § 2; 2013, No. 1363, § 1; 2017, No. 877, § 1.

# A.C.A. § 5-5-401

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 4 — Forfeiture of Weapons and Ammunition](#)

### **5-5-101. Definitions.**

As used in this subchapter, “weapon” means any firearm, bomb, explosive, metal knuckles, sword, spear, or other device employed as an instrument of crime by subjecting another to physical harm or fear of physical harm.

## History

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Acts 1995, No. 202, § 1; 2007, No. 827, § 17.

# A.C.A. § 5-5-402

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 4 — Forfeiture of Weapons and Ammunition](#)

### 5-5-402. Transfer to State Crime Laboratory.

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- (a) Notwithstanding any other provision of this chapter, a weapon or ammunition seized by any agency of the State of Arkansas or any local law enforcement agency in the state, and that is forfeited pursuant to law, may be transferred to the State Crime Laboratory.
- (2) However, no transfer of a weapon or ammunition shall be made pursuant to this section until there is a final determination concerning the disposition of the weapon or ammunition by the court having jurisdiction over the weapon or ammunition.
- (b) In addition to a forfeited weapon or ammunition, any other weapon or ammunition held by an agency of the state or a local law enforcement agency for which the agency has no use may be transferred to the laboratory under the procedures prescribed in this subchapter.
- (c) Nothing contained in this subchapter shall be construed to preclude a voluntary transfer to the State Crime Laboratory by an individual, entity, or agency of the United States Government.

### History

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Acts 1995, No. 202, § 1; 2007, No. 827, § 18.



# A.C.A. § 5-5-403

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 4 — Forfeiture of Weapons and Ammunition](#)

### 5-5-403. Authority of State Crime Laboratory to receive.

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The State Crime Laboratory may:

- (1) Receive a weapon or ammunition pursuant to this subchapter; and
- (2) Use a weapon or ammunition received pursuant to this subchapter for:
  - (A) Testing;
  - (B) Training;
  - (C) Data compilation; or
  - (D) Such other appropriate purposes as are determined by the Executive Director of the State Crime Laboratory.

### History

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Acts 1995, No. 202, § 1.

# A.C.A. § 5-5-404

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 4 — Forfeiture of Weapons and Ammunition](#)

## 5-5-404. Receipts.

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- (a)
- (1) When any weapon or ammunition is transferred and delivered to the State Crime Laboratory, the laboratory shall provide a receipt to be signed by the transferor or donor and the laboratory officer or employee accepting the weapon or ammunition.
- (2) The receipt shall contain the following information:
- (A) A list of any weapon by type, make, and caliber;
- (B) The serial number of a weapon, when available;
- (C) The case number of the case in which the weapon was involved, when available; and
- (D) The type, caliber, and make of the ammunition, when available.
- (b) A copy of the receipt shall be retained by the laboratory and a copy of the receipt shall be delivered to the agency, individual, or other entity transferring or donating a weapon or ammunition.

## History

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Acts 1995, No. 202, § 1.

# A.C.A. § 5-5-405

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 1. General Provisions](#)
- [Chapter 5 Disposition of Contraband and Seized Property](#)
- [Subchapter 4 — Forfeiture of Weapons and Ammunition](#)

### 5-5-405. Destruction.

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When the Executive Director of the State Crime Laboratory determines that any weapon or ammunition transferred or donated pursuant to a provision of this subchapter is no longer useful to the State Crime Laboratory, the weapon, piece of weapon, or ammunition shall be destroyed.

### History

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Acts 1995, No. 202, § 1.

# A.C.A. § 5-64-501

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 5 — Uniform Controlled Substances Act — Enforcement and Administration](#)

### 5-64-501. Powers of officials generally.

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Any law enforcement officer, any person authorized to enforce this chapter, or any employee of the Department of Health designated by the Secretary of the Department of Health to conduct an examination, investigation, or inspection under this chapter relating to a controlled substance or to a counterfeit drug may:

- (1) Carry a firearm in the performance of his or her official duties;
- (2) Execute and serve a search warrant, arrest warrant, administrative inspection warrant, subpoena, or summons issued under the authority of this state;
- (3) Make an arrest without warrant for any offense under this chapter committed in his or her presence, or if he or she has probable cause to believe that the person to be arrested has committed a violation of this chapter that may constitute a felony;
- (4) Make a seizure of property pursuant to this chapter; or
- (5) Perform any other law enforcement duty as the secretary designates.

### History

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Acts 1971, No. 590, Art. 5, § 1; 1972 (1st Ex. Sess.), No. 67, § 5; 1979, No. 898, § 14; A.S.A. 1947, § 82-2625; Acts 2005, No. 1994, § 308; 2019, No. 910, § 4846.

# A.C.A. § 5-64-505

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 64 Controlled Substances](#)
- [Subchapter 5 — Uniform Controlled Substances Act — Enforcement and Administration](#)

### 5-64-505. Property subject to forfeiture — Procedure — Disposition of property.

- (a) Items Subject to Forfeiture.** The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this section, however no property is subject to forfeiture based solely upon a misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:
- (1) Any controlled substance or counterfeit substance that has been manufactured, distributed, dispensed, or acquired in violation of this chapter;
  - (2) Any raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or counterfeit substance in violation of this chapter;
  - (3) Any property that is used, or intended for use, as a container for property described in subdivision (a)(1) or subdivision (a)(2) of this section;
  - (4) Any conveyance, including an aircraft, vehicle, or vessel that is used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (a)(1) or subdivision (a)(2) of this section, however:
    - (A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
- (B)**
- (i) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.
  - (ii) Upon a showing described in subdivision (a)(4)(B)(i) of this section by the owner or interest holder, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (a)(1) or subdivision (a)(2) of this section;
- (C)** A conveyance is not subject to forfeiture for a violation of §§ 5-64-419 and 5-64-441; and
- (D)** A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;
- (5)** Any book, record, or research product or material, including a formula, microfilm, tape, or data that is used, or intended for use, in violation of this chapter;
- (6)**
- (A) Anything of value, including firearms, furnished or intended to be furnished in exchange for a controlled substance or counterfeit substance in violation of this chapter, any proceeds or profits traceable to the exchange, and any money, negotiable instrument, or security used, or intended to be used, to facilitate any violation of this chapter.
  - (B) However, no property shall be forfeited under this subdivision (a)(6) to the extent of the interest of an owner by reason of any act or omission established by him or her, by a preponderance of the evidence, to have been committed or omitted without his or her knowledge or consent;
- (7) Rebuttable Presumptions.**

(A) Any money, coin, currency, or firearms found in close proximity to a forfeitable controlled substance, a counterfeit substance, forfeitable drug manufacturing or distributing paraphernalia, or a forfeitable record of an importation, manufacture, or distribution of a controlled substance or counterfeit substance is presumed to be forfeitable under this subdivision (a)(7).

(B) The burden of proof is upon a claimant of the property to rebut this presumption by a preponderance of the evidence; and

(8) Real property may be forfeited under this chapter if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this chapter, however:

(A) No real property is subject to forfeiture under this chapter by reason of any act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

(B) Real property is not subject to forfeiture for a violation of § 5-64-419, if the offense is a Class C felony or less, or § 5-64-441;

(C) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission;

(D) Upon conviction, when the circuit court having jurisdiction over the real property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order consistent with subsection (h) of this section;

(E) When any court orders a forfeiture of real property under this chapter, the order shall be filed of record on the day issued and shall have prospective effect only;

(F) A forfeiture of real property ordered under a provision of this chapter does not affect the title of a bona fide purchaser who purchased the real property prior to the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser; and

(G) Any lis pendens filed in connection with any action pending under a provision of this chapter that might result in the forfeiture of real property is operative only from the time filed and has no retroactive effect.

**(b) Seizure and Summary Forfeiture of Contraband.** The following items are deemed contraband and may be seized and summarily forfeited to the state:

(1) A controlled substance listed in Schedule I that is possessed, transferred, sold, or offered for sale in violation of this chapter and a controlled substance listed in Schedule I that is seized or comes into the possession of the state and the owner of the controlled substance is unknown;

(2)

(A) A species of a plant from which a controlled substance in Schedule I, Schedule II, or Schedule VI may be derived and:

(i) The plant has been planted or cultivated in violation of this chapter;

(ii) The plant's owner or cultivator is unknown; or

(iii) The plant is a wild growth.

(B) Upon demand by a seizing law enforcement agency, the failure of a person in occupancy or in control of land or premises where the species of plant is growing or being stored, to produce an appropriate registration or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plant; and

(3) Any drug paraphernalia or counterfeit substance except in the possession or control of a practitioner in the course of professional practice or research.

**(c) Seizure of Property.** Property subject to forfeiture under this chapter may be seized by any law enforcement agent upon process issued by any circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(3) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

**(d) Transfer of Property Seized by State or Local Agency to Federal Agency.**

(1) No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

**(e) Custody of Property Pending Disposition.**

(1) Property seized for forfeiture under this section is not subject to replevin, but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to any need to retain the property as evidence, when property is seized under this chapter the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, or is not needed for evidentiary purposes, deposit it in an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in any appropriate location within the jurisdiction of the court.

(3)

(A) In any case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this chapter.

**(f) Inventory of Property Seized — Referral to Prosecuting Attorney.**

(1) Any property seized by a state or local law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to the provisions of this section.

(2)

(A) When property is seized for forfeiture by a law enforcement agency, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B)

(i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.

(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.

(C) The original confiscation report shall be:

(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and

(ii) Maintained in a separate file.

(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.

(3) The confiscation report shall contain the following information:

(A) A detailed description of the property seized including any serial or model numbers and odometer or hour reading of vehicles or equipment;

(B) The date of seizure;

(C) The name and address from whom the property was seized;

(D) The reason for the seizure;

(E) Where the property will be held;

(F) The seizing law enforcement officer's name; and

(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.

(4) Within three (3) business days of receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Arkansas Drug Director.

(5)

(A) Arkansas Legislative Audit shall notify the Arkansas Alcohol and Drug Abuse Coordinating Council and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive any forfeited funds, forfeited property, or any grants from the council, if Arkansas Legislative Audit determines, by its own investigation or upon written notice from the Arkansas Drug Director, that:

(i) The law enforcement agency has failed to complete and file the confiscation reports as required by this section;

(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for any seized property; or

(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (i)(1) of this section.

(B) After the notice, the circuit court shall not issue any order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity nor shall any grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:

(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and

(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.

(C)

(i) While a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order any money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.

(ii) If the property is other than cash, the circuit court shall order the property converted to cash pursuant to subdivision (h)(1)(B) of this section and the proceeds transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.

(D) Moneys deposited into the Crime Lab Equipment Fund pursuant to subdivision (f)(5)(C) of this section are not subject to recovery or retrieval by the ineligible law enforcement agency, prosecuting attorney, or other public entity.

(6) The Arkansas Drug Director shall establish through rules a standardized confiscation report form to be used by all law enforcement agencies with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the Arkansas Drug Director under this subsection.

**(g) Initiation of Forfeiture Proceedings — Notice to Claimants — Judicial Proceedings.**

(1)

(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed in such a way as to avoid the distribution requirements set forth in subdivision (i)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the Arkansas Drug Director within five (5) calendar days after filing the complaint.

(2)

(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3)

(A) The prosecuting attorney may file the complaint after the expiration of the time set forth in subdivision (g)(2) of this section only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, in no event shall the complaint be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.



(C) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder. In addition, items seized but not subject to forfeiture under this section or subject to disposition pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder. If the owner or interest holder cannot be determined, the court may order disposition of the property in accordance with subsection (h) of this section.

(4)

(A) Subject to the Arkansas Rules of Civil Procedure, with regard to a person arrested for an offense giving rise to a forfeiture action, the owner or interest holder of the seized property shall file with the circuit clerk an answer to the complaint that shall include:

(i) A statement describing the seized property and the owner's or interest holder's interest in the seized property, with supporting documents to establish the owner's or interest holder's interest;

(ii) A certification by the owner or interest holder stating that he or she has read the answer and that it is not filed for any improper purpose;

(iii) A statement setting forth any defense to forfeiture; and

(iv) The address at which the owner or interest holder accepts mail.

(B) With regard to a third party not arrested for an offense giving rise to a forfeiture action, within forty-five (45) days of service of process the owner or interest holder of the seized property shall file with the circuit clerk an answer to the complaint.

(5)

(A) If the owner or interest holder fails to file an answer as required by subdivision (g)(4) of this section, the prosecuting attorney may move for default judgment pursuant to the Arkansas Rules of Civil Procedure.

(B)

(i) If a timely answer has been filed, the prosecuting attorney has the following burden of proof:

(a) With regard to a person arrested for an offense giving rise to the forfeiture action, the prosecuting attorney shall prove by a preponderance of the evidence that the seized property should be forfeited; or

(b) With regard to a third party not arrested for an offense giving rise to the forfeiture action, the prosecuting attorney shall prove by clear and convincing evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof under subdivision (g)(5)(B)(i) of this section, any owner or interest holder of the property seized is allowed to present evidence why the seized property should not be forfeited.

(iii)

(a) If the circuit court determines that grounds for forfeiting the seized property exist and that no defense to forfeiture has been established by the owner or interest holder, the circuit court shall enter an order pursuant to subsection (h) of this section.

(b) However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

**(h) Final Disposition.**

(1) When the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this chapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i)

(a) Seized property may not be retained for official use for more than two (2) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold as provided in subdivision (h)(1)(B) of this section and:

(1) Eighty percent (80%) of the proceeds shall be deposited into the drug control fund of the retaining law enforcement agency or prosecuting attorney; and

(2) Twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund.

(c)

(1) Nothing prohibits the retaining law enforcement agency or prosecuting attorney from selling the retained seized property at any time during the time allowed for retention.

(2) However, the proceeds of the sale shall be distributed as set forth in subdivision (h)(1)(A)(i)(b) of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund;

(iii)

(a) A drug task force may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation.

(b) After the order, the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation shall:

(1) Maintain an inventory of the forfeited property or money;

(2) Be accountable for the forfeited property or money; and

(3) Be subject to the provisions of subdivision (f)(5) of this section with respect to the forfeited property or money;

(iv)

(a) Any aircraft is forfeited to the office of the Arkansas Drug Director and may only be used for drug eradication or drug interdiction efforts, within the discretion of the Arkansas Drug Director.

(b) However, if the Arkansas Alcohol and Drug Abuse Coordinating Council determines that the aircraft should be sold, the sale shall be conducted pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds of the sale shall be deposited into the Special State Assets Forfeiture Fund;

(v) Any firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) Any controlled substance, plant, drug paraphernalia, or counterfeit substance shall be destroyed pursuant to a court order;

(B)

(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (h)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney pursuant to the provisions of § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property pursuant to this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days of the entry of the order, the circuit clerk shall forward to the Arkansas Drug Director copies of the confiscation report, the circuit court's order, and any other documentation detailing the disposition of the seized property.

(i) **Disposition of Moneys Received.** Subject to the provisions of subdivision (f)(5) of this section, the proceeds of sales conducted pursuant to subdivision (h)(1)(B) of this section and any moneys forfeited or obtained by judgment or settlement pursuant to this chapter shall be deposited and distributed in the manner set forth in this subsection. Moneys received from a federal forfeiture shall be deposited and distributed pursuant to subdivision (i)(4) of this section.

(1) **Asset Forfeiture Fund.**

(A) The proceeds of any sale and any moneys forfeited or obtained by judgment or settlement under this chapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited into the asset forfeiture fund exceeds twenty thousand dollars (\$20,000) per county, the prosecuting attorney shall, within fourteen (14) days of that time, notify the circuit judges in the judicial district and the Arkansas Drug Director;

(ii) Subsequent to the notification set forth in subdivision (i)(1)(A)(i) of this section, twenty percent (20%) of the proceeds of any additional sale and any additional moneys forfeited or obtained by judgment or settlement under this chapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in subdivision (i)(1)(A)(i) of this section renders the prosecuting attorney and any entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in subdivision (f)(5)(A) of this section; and

(iv) Twenty percent (20%) of any moneys in excess of twenty thousand dollars (\$20,000) that have been retained but not reported as required by subdivision (i)(1)(A)(i) of this section are subject to recovery for deposit into the Crime Lab Equipment Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund which is subject to audit by Arkansas Legislative Audit. Moneys distributed from the asset forfeiture fund shall only be used for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For satisfaction of any bona fide security interest or lien;

(ii) For payment of any proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under two hundred fifty thousand dollars (\$250,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this chapter; and

(iv) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Arkansas Drug Director to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution as provided in subdivision (i)(3) of this section.

(C)

(i) For a forfeiture in an amount greater than two hundred fifty thousand dollars (\$250,000) from which expenses are paid for a proceeding for forfeiture and sale under subdivision (i)(1)(B)(ii) of this section, an itemized accounting of the expenses shall be delivered to the Arkansas Drug Director within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

**(2) Drug Control Fund.**

(A)

(i) There is created on the books of law enforcement agencies and prosecuting attorneys a drug control fund.

(ii) The drug control fund shall consist of any moneys obtained under subdivision (i)(1) of this section and any other revenue as may be provided by law or ordinance.

(iii) Moneys from the drug control fund may not supplant other local, state, or federal funds.

(iv) Moneys in the drug control fund are appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.

(v) Moneys in the drug control fund shall only be used for law enforcement and prosecutorial purposes, including without limitation to provide a grant of up to one thousand dollars (\$1,000) to the family of a law enforcement officer who dies in the prosecuting attorney's jurisdiction.

(vi) The drug control fund is subject to audit by Arkansas Legislative Audit.

(B) The law enforcement agencies and prosecuting attorneys shall submit to the Arkansas Drug Director on or before January 1 and July 1 of each year a report detailing any moneys received and expenditure made from the drug control fund during the preceding six-month period.

**(3) Special State Assets Forfeiture Fund.**

(A) There is created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Special State Assets Forfeiture Fund".

(B)

(i) The Special State Assets Forfeiture Fund shall consist of revenues obtained under subdivision (i)(1)(B)(iv) of this section and any other revenue as may be provided by law.

(ii) Moneys from the Special State Assets Forfeiture Fund may not supplant other local, state, or federal funds.

(C) The Special State Assets Forfeiture Fund is not subject to the provisions of the Revenue Stabilization Law, § 19-5-101 et seq., or the Special Revenue Fund Account of the State Apportionment Fund, § 19-5-203(b)(2)(A).

(D)

(i) The Arkansas Drug Director shall establish through rules a procedure for proper investment, use, and disposition of state moneys deposited into the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this chapter.

(ii) State moneys in the Special State Assets Forfeiture Fund shall be distributed by the Arkansas Alcohol and Drug Abuse Coordinating Council and shall be distributed for drug interdiction, eradication, education, rehabilitation, the State Crime Laboratory, and drug courts.

**(4) Federal Forfeitures.**

**(A)**

**(i)**

(a) Any moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture shall be deposited and maintained in a separate account.

(b) However, any balance over two hundred fifty thousand dollars (\$250,000) shall be distributed as set forth in subdivision (i)(4)(B) of this section.

(ii) No other moneys may be maintained in the account except for any interest income generated by the account.

(iii) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(iv) The account is subject to audit by Arkansas Legislative Audit.

**(B)**

(i) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Division of Arkansas State Police to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistent with governing federal law and upon the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council.

(ii) Of the moneys contained in the Special State Assets Forfeiture Fund at the beginning of each fiscal year, no more than:

(a) Twenty-five percent (25%) shall be retained by the Division of Arkansas State Police to be used for law enforcement purposes consistent with governing federal law; and

(b) Sixty-five percent (65%) may be distributed among other state and local law enforcement agencies to be used for law enforcement purposes consistent with federal law.

(iii) With the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council, the Division of Arkansas State Police shall promulgate rules and procedures for the distribution by an allocation formula of moneys set forth in subdivision (i)(4)(B)(ii)(b) of this section.

(j) **In Personam Proceedings.** In personam jurisdiction may be based on a person's presence in the state, or on his or her conduct in the state, as set out in § 16-4-101(C), and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state, upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

**(2)**

(A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on any owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

**(4)**

(A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or any law enforcement officer to seize any property subject to forfeiture pursuant to subsection (a) of this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (h) of this section.

- (C) In connection with the judgment, on application of the state, the circuit court may enter any appropriate order to protect the interest of the state in property ordered forfeited; and
- (5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:
- (A) The attorney for the state shall give notice of pending forfeiture, in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, to any owner or interest holder who has not previously been given notice;
- (B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and
- (C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under subdivision (a)(4), subdivision (a)(6), or subdivision (a)(8) of this section.
- (k) The circuit court shall order the forfeiture of any other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under subsection (a) of this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:
- (1) Cannot be located;
  - (2) Was transferred or conveyed to, sold to, or deposited with a third party;
  - (3) Is beyond the jurisdiction of the circuit court;
  - (4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;
  - (5) Was commingled with other property that cannot be divided without difficulty; or
  - (6) Is subject to any interest exempted from forfeiture under this subchapter.
- (l)
- (1)
- (A) On the fifth day of each month the Treasurer of State shall transfer to the Division of Community Correction Fund Account twenty percent (20%) of any moneys deposited into the Special State Assets Forfeiture Fund during the previous month.
- (B) However, in no event shall more than eight hundred thousand dollars (\$800,000) be transferred during any one (1) fiscal year.
- (2) Any moneys transferred to the Division of Community Correction Fund Account from the Special State Assets Forfeiture Fund in accordance with this subsection shall:
- (A) Be used for the personal services and operating expenses of the drug courts and for no other purpose; and
- (B) Not be transferred from the Division of Community Correction Fund Account.
- (m)
- (1) There shall be no civil judgment under this subchapter and no property shall be forfeited unless the person from whom the property is seized is convicted of a felony offense that related to the property being seized and that permits the forfeiture of the property.
- (2) The court may waive the conviction requirement under this subsection if the prosecuting attorney shows by clear and convincing evidence that, before a conviction, the person from whom the property was seized:
- (A) Died;
  - (B) Was deported by the United States Government;
  - (C) Was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement agency or prosecution;
  - (D) Fled the jurisdiction or failed to appear on the underlying criminal charge;
  - (E) Failed to answer the complaint for civil asset forfeiture under this section as specified in the Arkansas Rules of Civil Procedure;
  - (F) Abandoned or disclaimed interest or ownership in the property seized; or
  - (G) Agreed in writing with the prosecuting attorney and other parties as to the disposition of the property.

## History

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Acts 1971, No. 590, Art. 5, § 5; 1977, No. 334, § 1; 1981, No. 78, § 3; 1981, No. 863, §§ 1, 2; 1983, No. 787, §§ 7, 8; 1985, No. 1074, § 1; A.S.A. 1947, § 82-2629; Acts 1989, No. 252, §§ 1, 2; 1989 (3rd Ex. Sess.), No. 87, §§ 1, 2, 4; 1991, No. 573, § 1; 1991, No. 1050, § 1; 1999, No. 1120, § 2; 2001, No. 1495, § 2; 2001, No. 1690, §§ 1, 2; 2003, No. 1447, § 1; 2005, No. 1994, § 310; 2005, No. 2245, § 1; 2007, No. 493, §§ 1-3; 2007, No. 827, § 65; 2007, No. 830, § 1; 2009, No. 699, § 1; 2011, No. 570, §§ 67, 68; 2017, No. 707, § 4; 2019, No. 315, §§ 164, 165; 2019, No. 476, § 1; 2021, No. 1023, § 2[3].

# A.C.A. § 5-73-110

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### 5-73-110. Disarming minors and mentally defective or mentally irresponsible persons — Disposition of property seized.

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- (a) Subject to constitutional limitation, nothing in this section and §§ 5-73-101 — 5-73-109 shall be construed to prohibit a law enforcement officer from disarming, without arresting, a minor or person who reasonably appears to be mentally defective or otherwise mentally irresponsible when that person is in possession of a deadly weapon.
- (b) Property seized under subsection (a) of this section shall be:
- (1) Held for seventy-two (72) hours by the law enforcement agency employing the law enforcement officer who seized the property; and
- (2) After the seventy-two-hour hold and upon request and presentation of valid proof of ownership, returned to the:
- (A) Owner, if he or she is eighteen (18) years of age or older and may lawfully possess the property; or
- (B) Parent or legal guardian of the owner, if the owner is a minor and the parent or legal guardian may lawfully possess the property.

### History

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Acts 1975, No. 280, § 3110; A.S.A. 1947, § 41-3110; Acts 2015, No. 688, § 1.

# A.C.A. § 5-73-111

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### 5-73-111. Unlawful procurement of a firearm.

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(a) As used in this section:

- (1) "Ammunition" means any cartridge, shell, or projectile designed for use in a firearm;
- (2) "False information" means information that portrays an unlawful transaction as lawful or a lawful transaction as unlawful;
- (3) "Licensed dealer" means a person who is licensed under 18 U.S.C. § 923, as it existed on January 1, 2013, to engage in the business of dealing in firearms; and
- (4) "Private seller" means a person other than a licensed dealer who sells or offers for sale a firearm or ammunition.

(b) A person commits the offense of unlawful procurement of a firearm or ammunition if he or she knowingly:

- (1) Solicits, persuades, encourages, or entices a licensed dealer or private seller to transfer a firearm or ammunition under unlawful circumstances; or
- (2) Provides false information to a licensed dealer or private seller with a purpose to deceive the licensed dealer or private seller concerning the lawfulness of a transfer of a firearm or ammunition.

(c) It is a defense to prosecution under this section if the person is:

- (1) A law enforcement officer acting in his or her official capacity; or
- (2) Acting at the direction of a law enforcement officer.

(d) Unlawful procurement of a firearm or ammunition is a Class D felony.

### History

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Acts 2013, No. 507, § 1.



# A.C.A. § 5-73-130

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### 5-73-130. Seizure and forfeiture of firearm — Seizure and forfeiture of motor vehicle — Disposition of property seized.

- 
- (a) If a person under eighteen (18) years of age is unlawfully in possession of a firearm, the firearm shall be seized and, after an adjudication of delinquency or a conviction, is subject to forfeiture.
- (b) If a felon or a person under eighteen (18) years of age is unlawfully in possession of a firearm in a motor vehicle, the motor vehicle is subject to seizure and, after an adjudication of delinquency or a conviction, subject to forfeiture.
- (c) As used in this section, "unlawfully in possession of a firearm" does not include any act of possession of a firearm that is prohibited only by a regulation or rule of the Arkansas State Game and Fish Commission.
- (d) The procedures for forfeiture and disposition of the seized property are as follows:
- (1) The prosecuting attorney of the judicial district within whose jurisdiction the property is seized that is sought to be forfeited shall promptly proceed against the property by filing in the circuit court a petition for an order to show cause why the circuit court should not order forfeiture of the property; and
- (2) The petition shall be verified and shall set forth:
- (A) A statement that the action is brought pursuant to this section;
- (B) The law enforcement agency bringing the action;
- (C) A description of the property sought to be forfeited;
- (D) A statement that on or about a date certain there was an adjudication of delinquency or a conviction and a finding that the property seized is subject to forfeiture;
- (E) A statement detailing the facts in support of subdivision (d)(1) of this section; and
- (F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.
- (e)
- (1) Upon receipt of a petition complying with the requirements of subdivision (d)(1) of this section, the circuit court judge having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.
- (2) In addition, the order shall set a date at least forty-one (41) days from the date of first publication of the order pursuant to subsection (f) of this section for all persons claiming an interest in the property to file such pleadings as they desire as to why the circuit court should not order the forfeiture of the property for use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.
- (3) The circuit court shall further order that any person who does not appear on that date is deemed to have defaulted and waived any claim to the subject property.
- (f)
- (1) The prosecuting attorney shall give notice of the forfeiture proceedings by:
- (A) Causing a copy of the order to show cause to be published two (2) times each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located with the last publication being not less than five (5) days before the show cause hearing; and

(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(i) The property is of a type for which title or registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The law enforcement agency is only obligated to make diligent search and inquiry as to the owner of the property, and if, after diligent search and inquiry, the law enforcement agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to a person having a perfected security interest in the property is not applicable.

(g) At the hearing on the matter, the petitioner has the burden to establish that the property is subject to forfeiture by a preponderance of the evidence.

(h) In determining whether or not a motor vehicle should be ordered forfeited, the circuit court may take into consideration the following factors:

(1) Any prior criminal conviction or delinquency adjudication of the felon or juvenile;

(2) Whether or not the firearm was used in connection with any other criminal act;

(3) Whether or not the motor vehicle was used in connection with any other criminal act;

(4) Whether or not the juvenile or felon was the lawful owner of the motor vehicle in question;

(5) If the juvenile or felon is not the lawful owner of the motor vehicle in question, whether or not the lawful owner knew of the unlawful act being committed that gives rise to the forfeiture penalty; and

(6) Any other factor the circuit court deems relevant.

(i) The final order of forfeiture by the circuit court shall perfect in the law enforcement agency right, title, and interest in and to the property and shall relate back to the date of the seizure.

(j) Physical seizure of property is not necessary in order to allege in a petition under this section that the property is forfeitable.

(k) Upon filing the petition, the prosecuting attorney for the judicial district may also seek a protective order to prevent the transfer, encumbrance, or other disposal of any property named in the petition.

(l) The law enforcement agency to which a motor vehicle is forfeited shall either:

(1) Sell the motor vehicle in accordance with subsection (m) of this section; or

(2) If the motor vehicle is not subject to a lien that has been preserved by the circuit court, retain the motor vehicle for official use.

(m)

(1) If a law enforcement agency desires to sell a forfeited motor vehicle, the law enforcement agency shall first cause notice of the sale to be made by publication at least two (2) times a week for two (2) consecutive weeks in a newspaper having general circulation in the county and by sending a copy of the notice of the sale by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(A) The property is of a type for which title or registration is required by law;

(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The notice of the sale shall include the time, place, and conditions of the sale and a description of the property to be sold.

(3) The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.

(n) The proceeds of any sale and any moneys forfeited shall be applied to the payment of:

(1) The balance due on any lien preserved by the circuit court in the forfeiture proceedings;

(2) The cost incurred by the seizing law enforcement agency in connection with the storage, maintenance, security, and forfeiture of the property;

(3) The costs incurred by the prosecuting attorney or attorney for the law enforcement agency, approved by the prosecuting attorney, to which the property is forfeited; and

(4) Costs incurred by the circuit court.

(o) The remaining proceeds or moneys shall be deposited into a special county fund to be titled the "Juvenile Crime Prevention Fund", and the moneys in the fund shall be used solely for making grants to community-based nonprofit organizations that work with juvenile crime prevention and rehabilitation.

(p)

(1) The law enforcement agency to which a firearm is forfeited may trade the firearm to a federally licensed firearms dealer for credit toward future purchases by the law enforcement agency.

(2) If the firearm is unable to be traded to a federally licensed firearms dealer, the law enforcement agency may dispose of the firearm as the law enforcement agency deems appropriate.

## History

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Acts 1994 (2nd Ex. Sess.), No. 55, § 1; 1994 (2nd Ex. Sess.), No. 56, § 1; 2005, No. 1994, § 260; 2007, No. 827, § 96; 2019, No. 315, § 171; 2019, No. 630, §§ 1, 2; 2021, No. 433, § 2.

# A.C.A. § 5-73-132

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 5 Criminal Offenses](#)
- [Subtitle 6. Offenses Against Public Health, Safety, or Welfare](#)
- [Chapter 73 Weapons](#)
- [Subchapter 1 — Possession and Use Generally](#)

### 5-73-132. Sale, rental, or transfer of firearm to person prohibited from possessing firearms.

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- (a) A person shall not sell, rent, or transfer a firearm to any person whom he or she knows is prohibited by state or federal law from possessing the firearm.
- (b)
- (1) Violation of this section is a Class A misdemeanor, unless the firearm is:
- (A) A handgun;
- (B) An explosive or incendiary device, as defined in § 5-71-301;
- (C) A defaced firearm, as described in § 5-73-107; or
- (D) Other implement for the infliction of serious physical injury or death that serves no lawful purpose.
- (2) If the firearm is listed in subdivision (b)(1) of this section, a violation of this section is a Class B felony.

### History

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Acts 1999, No. 1558, § 3; 2019, No. 495, § 4; 2019, No. 1051, § 4.

# A.C.A. § 16-21-147

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 2. Courts and Court Officers](#)
- [Chapter 21 Prosecuting Attorneys](#)
- [Subchapter 1 — General Provisions](#)

### 16-21-147. Powers of deputy prosecuting attorney — Disposition of federal forfeiture funds.

(a) A deputy prosecuting attorney who is duly appointed in any county of a judicial district shall, with the prosecuting attorney's consent, have the authority to perform all official acts as a deputy prosecuting attorney in all counties within the district.

(b)

(1) A prosecuting attorney and those deputy prosecuting attorneys and other staff members he or she designates shall be considered law enforcement officers for the purposes of utilizing emergency, protective, and communication equipment in coordination with interagency cooperative investigations and operations.

(2) However, the prosecuting attorney and all members of his or her office shall have no greater arrest powers than those accorded all citizens under the Arkansas Constitution and the Arkansas Code.

(3) A prosecuting attorney and those deputy prosecuting attorneys designated by the prosecuting attorney may carry firearms.

(4) A prosecuting attorney who elects to carry a firearm or authorize his or her deputy prosecuting attorneys to carry a firearm shall adopt a weapons policy and a use of force policy.

(c) A prosecuting attorney shall have the power to appoint deputy prosecuting attorneys and other employees at such salaries as are authorized in the grant awards from the Department of Finance and Administration's Drug Law Enforcement Program, Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570, as amended, or its successor.

(d) All federal forfeitures to a prosecuting attorney's office shall be deposited in a separate account pursuant to § 5-64-505(i)(4).

### History

Acts 1993, No. 1306, § 4; 1999, No. 1120, § 7; 2013, No. 539, § 4.

# A.C.A. § 16-90-119

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 16 Practice, Procedure, And Courts](#)
- [Subtitle 6. Criminal Procedure Generally](#)
- [Chapter 90 Judgment and Sentence Generally](#)
- [Subchapter 1 — General Provisions](#)

### 16-90-119. Confiscation of deadly weapons.

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(a) When any person is convicted of any homicide, burglary, robbery, assault with intent to kill, assault with a deadly weapon, battery, or any other felony involving a deadly weapon, the court in which the person is convicted may confiscate the deadly weapons involved in the offense and may by court order either:

- (1) Transfer the weapons and the title to the weapons to an appropriate state or local law enforcement agency for use or sale by the law enforcement agency; or
- (2) Order the weapons destroyed if the weapons are not suitable for use or sale by law enforcement agencies.

(b)

- (1) The sale of weapons by a law enforcement agency under this section shall be at a public auction or by competitive bid.
- (2) The sale shall be subject to a background check of the purchaser through the Federal Bureau of Investigation's National Instant Criminal Background Check System.
- (3) The sale shall not include illegal weapons.
- (4) The proceeds of the auction shall be retained by the law enforcement agency.

### History

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Acts 1953, No. 267, § 1; A.S.A. 1947, § 43-2327; Acts 1987, No. 712, § 1; 2005, No. 889, § 1.

# A.C.A. § 26-57-247

## Copy Citation

Current through all legislation of the 2023 Regular Session and the 2023 First Extraordinary Session.

- [AR - Arkansas Code Annotated](#)
- [Title 26 Taxation](#)
- [Subtitle 5. State Taxes](#)
- [Chapter 57 State Privilege Taxes](#)
- [Subchapter 2 — Arkansas Tobacco Products Tax Act of 1977](#)

26-57-247. Seizure, forfeiture, and disposition of tobacco products and other property.  
[Effective if contingency in Acts 2023, No. 629, § 17, is met.]

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(a) Cigarettes to which stamps have not been affixed as provided by law are subject to seizure and shall be held as evidence for prosecution.

(b) The Director of Arkansas Tobacco Control may seize and hold for disposition of the courts or the Arkansas Tobacco Control Board all tobacco products, vapor products, alternative nicotine products, e-liquid products, or hemp-derived products found in the possession of a person dealing in, or a consumer of, tobacco products, vapor products, alternative nicotine products, e-liquid products, or hemp-derived products if:

(1) Prima facie evidence exists that the full amount of excise tax due on the tobacco products has not been paid to the Secretary of the Department of Finance and Administration;

(2) Tobacco products, vapor products, alternative nicotine products, or e-liquid products are in the possession of a wholesaler who does not possess a current Arkansas wholesale permit;

(3) A retail establishment does not possess a current Arkansas retail permit;

(4) The tobacco products, vapor products, alternative nicotine products, or e-liquid products have been offered for sale to the public at another location without a current Arkansas retail permit; or

(5) Hemp-derived products are possessed, sold, or offered for sale in violation of § 20-56-401 et seq.

(c) Property, including money, used to facilitate a violation of this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., may be seized and forfeited to the state.

(d)

(1) A prosecuting attorney may institute a civil action against a person who is convicted of a criminal violation under this subchapter or the Unfair Cigarette Sales Act, § 4-75-701 et seq., to obtain a judgment for:

(A) Damages in an amount equal to the value of the property, funds, or a monetary instrument involved in the violation;

(B) The proceeds acquired by a person involved in the enterprise or by reason of conduct in furtherance of the violation; and

(C) Costs incurred by Arkansas Tobacco Control in the investigation, prosecution, and adjudication of criminal, civil, and administrative proceedings.

(2) The standard of proof in an action brought under subdivision (d)(1) of this section is preponderance of the evidence.

(e) The following are subject to forfeiture under this section upon order by a circuit court:

(1) Tobacco products, vapor products, alternative nicotine products, or e-liquid products distributed, dispensed, or acquired in violation of this subchapter;

(2) Raw materials, products, or equipment used or intended for use in manufacturing, compounding, processing, delivering, importing, or exporting a tobacco product, vapor product, alternative nicotine product, or e-liquid product in violation of this subchapter;

(3) Property that is used or intended for use as a container for property described in subdivision (e)(1) or subdivision (e)(2) of this section;

(4)

(A) Except as provided in subdivision (e)(4)(B) of this section, a conveyance, including an aircraft, vehicle, or vessel, that is used or intended to be used to transport or in any manner to facilitate the

transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or subdivision (e)(2) of this section.

**(B)**

(i) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this subchapter.

(ii) A conveyance is not subject to forfeiture under this section by reason of an act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.

**(C)** Upon a showing described in subdivision (e)(4)(B)(i) of this section by the owner or interest holder of a conveyance, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (e)(1) or subdivision (e)(2) of this section.

**(D)** A conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter;

**(5)** A book, record, or research product or material, including a formula, microfilm, tape, or data that is used or intended for use in violation of this subchapter;

**(6)**

**(A)** Except as provided in subdivision (e)(6)(B) of this section, a thing of value, including:

(i) Firearms purchased from the proceeds of the sale of untaxed tobacco products, vapor products, alternative nicotine products, or e-liquid products in violation of this subchapter or used in furtherance of a criminal offense as described in § 26-57-245;

(ii) Proceeds or profits traceable to an exchange described in subdivision (e)(6)(A)(i) of this section; and

(iii) Money, negotiable instruments, or security used or intended to be used to facilitate a violation of this subchapter.

**(B)** Property shall not be forfeited under subdivision (e)(6)(A) of this section to the extent of the interest of an owner by reason of an act or omission established by him or her by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;

**(7)**

**(A)** Money, coins, or currency found in close proximity to a forfeitable tobacco product, vapor product, alternative nicotine product, or e-liquid product or a forfeitable record of an importation of a tobacco product, vapor product, alternative nicotine product, or e-liquid product is presumed to be forfeitable under this section.

**(B)** The burden of proof is upon a claimant of the money, coins, or currency to rebut the presumption in subdivision (e)(7)(A) of this section by a preponderance of the evidence; and

**(8)**

**(A)** Except as provided in subdivision (e)(8)(B) of this section, real property if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this subchapter.

**(B)**

(i) Real property is not subject to forfeiture under this section by reason of an act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent.

(ii) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to an act or omission in violation of this subchapter.

(iii) If the circuit court finds by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order requiring the forfeiture of the real property.

**(C)** Upon an order of forfeiture of real property, the order shall be filed on the day issued and shall have prospective effect.

**(D)** A forfeiture of real property does not affect the title of a bona fide purchaser who purchased the real property before the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser.

**(E)** A lis pendens filed in connection with an action pending under this section that may result in the forfeiture of real property is effective only from the time filed and has no retroactive effect.



(f) A tobacco product, vapor product, alternative nicotine product, or e-liquid product that is possessed, transferred, sold, or offered for sale in violation of this subchapter may be seized and immediately forfeited to the state.

(g)

(1) Property subject to forfeiture under this subchapter may be seized by a law enforcement agent upon process issued by a circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit.

(2) Seizure without process may be made if:

(A) The seizure is incident to an arrest or a search under a search warrant or an inspection under the regulatory authority of Arkansas Tobacco Control;

(B) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this subchapter;

(C) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(D) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this subchapter.

(h)

(1) A state or local law enforcement agency shall not transfer property seized by the state or local agency under this section to a federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.

(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.

(i)

(1) Property seized for forfeiture under this section is not subject to replevin but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.

(2) Subject to a need to retain the property as evidence, when property is seized under this subchapter, the seizing law enforcement agency may:

(A) Remove the property to a place designated by the circuit court;

(B) Place the property under constructive seizure, posting notice of pending forfeiture on it by:

(i) Giving notice of pending forfeiture to its owners and interest holders; or

(ii) Filing notice of pending forfeiture in an appropriate public record relating to the property;

(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money or is not needed for evidentiary purposes, deposit it into an interest-bearing account; or

(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in an appropriate location within the jurisdiction of the court.

(3)

(A) In case of transfer of property, a transfer receipt shall be prepared by the transferring agency.

(B) The transfer receipt shall:

(i) List a detailed and complete description of the property being transferred;

(ii) State to whom the property is being transferred and the source or authorization for the transfer; and

(iii) Be signed by both the transferor and the transferee.

(C) Both transferor and transferee shall maintain a copy of the transfer receipt.

(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this subchapter.

(j)

(1) Property seized by a state or local law enforcement officer under this section who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to this section.

(2)

(A) If property is seized for forfeiture by a law enforcement agency under this section, the seizing law enforcement officer shall prepare and sign a confiscation report.

(B)

- (i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.
- (ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.
- (C) The original confiscation report shall be:
  - (i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and
  - (ii) Maintained in a separate file.
- (D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.
- (3) The confiscation report shall contain the following information:
  - (A) A detailed description of the property seized including serial or model numbers and odometer or hour reading of vehicles or equipment;
  - (B) The date of seizure;
  - (C) The name and address of the party from whom the property was seized;
  - (D) The reason for the seizure;
  - (E) The location where the property will be held;
  - (F) The seizing law enforcement officer's name; and
  - (G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.
- (4) Within three (3) business days after receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the director.
- (5)
  - (A) Arkansas Legislative Audit shall notify the director and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive forfeited funds, forfeited property, or grants from the council, if Arkansas Legislative Audit determines by its own investigation or upon written notice from the director that:
    - (i) The law enforcement agency failed to complete and file the confiscation reports as required by this section;
    - (ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for the seized property; or
    - (iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (m)(2) of this section.
  - (B) After the notice, the circuit court shall not issue an order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity, nor shall a grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:
    - (i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and
    - (ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.
- (C)
  - (i) If a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.
  - (ii) If the property is not cash, the circuit court shall order the property converted to cash under this section and the proceeds transmitted to the Treasurer of State for deposit into the Special State Assets Forfeiture Fund.
- (D) Moneys deposited into the Special State Assets Forfeiture Fund are not subject to recovery or retrieval by an ineligible law enforcement agency, prosecuting attorney, or other public entity.
- (6) The director shall establish by rule a standardized confiscation report form to be used by all law enforcement agencies, with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the director under this subsection.
- (k)
- (l)
- (A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed to avoid the distribution requirements set forth in subdivision (l)(1) of this section.

(C) The prosecuting attorney shall mail a copy of the complaint to the director within five (5) calendar days after filing the complaint.

(2)

(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.

(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.

(3)

(A) The prosecuting attorney may file the complaint after the expiration of the time only if the complaint is accompanied by a statement of good cause for the late filing.

(B) However, the complaint shall not be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.

(C)

(i) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder.

(ii) In addition, items seized but not subject to forfeiture under this section or subject to disposition under law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder.

(iii) If the owner or interest holder cannot be determined, the court may order disposition of the property.

(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a verified answer to the complaint that shall include:

(A) A statement describing the seized property and the owner's interest or interest holder's interest in the seized property with supporting documents to establish the owner's interest or interest holder's interest;

(B) A certification by the owner or interest holder stating that he or she has read the document and that it has not been filed for an improper purpose;

(C) A statement setting forth any defense to forfeiture; and

(D) The address at which the owner or interest holder will accept mail.

(5)

(A) If the owner or interest holder fails to file an answer, the prosecuting attorney may move for default judgment under the Arkansas Rules of Civil Procedure.

(B)

(i) If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.

(ii) After the prosecuting attorney has presented proof, an owner or interest holder of the property seized is allowed to present evidence showing why the seized property should not be forfeited.

(iii) If the circuit court determines that grounds for forfeiting the seized property exist and that a defense to forfeiture has not been established by the owner or interest holder, the circuit court shall enter an order under this section. However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.

(l)

(1) If the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this subchapter, the circuit court shall enter an order:

(A) To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:

(i)

(a) Seized property may not be retained for official use for more than three (3) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.

(b) At the end of the retention period, the seized property shall be sold and eighty percent (80%) of the proceeds shall be deposited into the tobacco control fund of the retaining law enforcement agency or prosecuting attorney, and twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund.

(c) The retaining law enforcement agency or prosecuting attorney may sell the retained seized property during the time allowed for retention. However, the proceeds of the sale shall be distributed as set forth in subdivision (l)(1)(A)(i)(b) of this section;

(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold under § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund;

(iii)

(a) A law enforcement agency may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, sheriff, chief of police, Division of Arkansas State Police, director, or Arkansas Highway Police Division of the Arkansas Department of Transportation.

(b) After the order, the prosecuting attorney, sheriff, chief of police, Division of Arkansas State Police, director, or Arkansas Highway Police Division of the Arkansas Department of Transportation shall maintain an inventory of the forfeited property or money, be accountable for the forfeited property or money, and be subject to subdivision (j)(5) of this section with respect to the forfeited property or money;

(iv)

(a) An aircraft is forfeited to the office of the director and may be used only for tobacco, vapor product, alternative nicotine product, or e-liquid product smuggling interdiction efforts within the discretion of the director.

(b) However, if the director determines that the aircraft should be sold, the proceeds of the sale shall be distributed as set forth in subdivision (l)(1)(A)(i)(b) of this section;

(v) A firearm not retained for official use shall be disposed of in accordance with state and federal law; and

(vi) A tobacco product, vapor product, alternative nicotine product, or e-liquid product shall be destroyed pursuant to a court order;

(B)

(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.

(ii) Seized property described in subdivision (l)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney under § 5-5-101(e) and (f); or

(C) To transfer a motor vehicle to a school district for use in a driver education course.

(2) Disposition of forfeited property under this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.

(3) Within three (3) business days after the entry of the order, the circuit clerk shall forward to the director copies of the confiscation report, the circuit court's order, and other documentation detailing the disposition of the seized property.

(m)

(l)

(A) Subject to subdivision (j)(5) of this section, the proceeds of sales conducted under this section and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited and distributed in the manner provided in this subsection.

(B) Moneys received from a federal forfeiture for a violation of this subchapter shall be deposited and distributed under this section.

(l)

(A) The proceeds of a sale and moneys forfeited or obtained by judgment or settlement under this subchapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:

(i) If, during a calendar year, the aggregate amount of moneys deposited into the asset forfeiture fund exceeds twenty thousand dollars (\$20,000) per county, the prosecuting attorney, within fourteen (14) days after that time, shall notify the circuit judges in the judicial district and the director;

(ii) Subsequent to the notification set forth in this section, twenty percent (20%) of the proceeds of an additional sale and additional moneys forfeited or obtained by judgment or settlement under this subchapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Special State Assets Forfeiture Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;

(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in this section renders the prosecuting attorney and an entity eligible to receive forfeited moneys or property

from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in this section; and

(iv) Twenty percent (20%) of moneys in excess of twenty thousand dollars (\$20,000) that have been retained but not reported as required by this section are subject to recovery for deposit into the Special State Assets Forfeiture Fund.

(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund, which is subject to audit by Arkansas Legislative Audit. Moneys distributed from the asset forfeiture fund shall be used only for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:

(i) For the satisfaction of a bona fide security interest or lien;

(ii) For payment of a proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;

(iii) Any balance under three hundred fifty thousand dollars (\$350,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this subchapter; and

(iv) Any balance over three hundred fifty thousand dollars (\$350,000) shall be forwarded to the director to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution under this section.

(C)

(i) For a forfeiture in an amount greater than three hundred fifty thousand dollars (\$350,000) from which expenses are paid for a proceeding for forfeiture and sale under this section, an itemized accounting of the expenses shall be delivered to the director within ten (10) calendar days after the distribution of the funds.

(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.

(2)

(A) Moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture for a violation of this subchapter shall be deposited and maintained in a separate account.

(B) However, a balance over three hundred fifty thousand dollars (\$350,000) shall be distributed as required under this section.

(3) Other moneys shall not be maintained in the account except for interest income generated by the account.

(4) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.

(5) The account is subject to audit by Arkansas Legislative Audit.

(6) A balance over three hundred fifty thousand dollars (\$350,000) shall be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund in which it shall be maintained separately and distributed consistently with governing federal law and upon the advice of the director.

(n) In personam jurisdiction may be based on a person's presence in the state or on his or her conduct in the state, as set out in § 16-4-101(C), and is subject to the following additional provisions:

(1) A temporary restraining order under this section may be entered ex parte on application of the state upon a showing that:

(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and

(B) Notice of the action would jeopardize the availability of the property for forfeiture;

(2)

(A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.

(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:

(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction of the circuit court, concealed, or otherwise made unavailable for forfeiture; and

(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on an owner or interest holder against whom the temporary restraining order is to be entered;

(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;

(4)

(A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or a law enforcement officer to seize property subject to forfeiture under this section not previously seized or not then under seizure.

(B) The order of forfeiture shall be consistent with subsection (l) of this section.

(C) In connection with the judgment, on application of the state, the circuit court may enter an appropriate order to protect the interest of the state in property ordered forfeited; and

(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:

(A) The attorney for the state shall give notice of pending forfeiture in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure to an owner or interest holder who has not previously been given notice;

(B) An owner of or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and

(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under this section.

(o) The circuit court shall order the forfeiture of other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:

(1) Cannot be located;

(2) Was transferred or conveyed to, sold to, or deposited with a third party;

(3) Is beyond the jurisdiction of the circuit court;

(4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;

(5) Was commingled with other property that cannot be divided without difficulty; or

(6) Is subject to interest exempted from forfeiture under this subchapter.

(p)

(1) There is created on the books of law enforcement agencies and prosecuting attorneys a tobacco control fund.

(2) The fund shall consist of moneys obtained under this section and other revenue as may be provided by law or ordinance.

(3) Moneys in the tobacco control fund shall be appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.

(4)

(A) The fund shall be used for law enforcement and prosecutorial purposes.

(B) Each prosecuting attorney shall submit to the Director of Arkansas Tobacco Control on or before June 30 of each year a report detailing moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(5) The law enforcement agencies and prosecuting attorneys shall submit to the director on or before June 30 of each year a report detailing any moneys received and expenditures made from the tobacco control fund during the preceding twelve-month period.

(6) Moneys from the tobacco control fund may not supplant other local, state, or federal funds.

(7) The tobacco control fund is subject to audit by Arkansas Legislative Audit.

## History

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Acts 1977, No. 546, § 25; A.S.A. 1947, § 84-4525; Acts 1997, No. 1337, § 21; 2009, No. 785, § 22; 2009, No. 939, § 1; 2011, No. 983, § 18; 2015, No. 1235, §§ 11-16; 2017, No. 707, § 301; 2019, No. 910, § 4156; 2019, No. 1071, § 22; 2023, No. 629, § 11.