

**PERSISTENTLY DANGEROUS SCHOOLS OR
THE UNSAFE SCHOOL CHOICE OPTION
August 2019**

The Every Student Succeeds Act (ESSA) requires each state that receives Title I funds to establish and implement a statewide policy which provides that a student who attends a persistently dangerous elementary or secondary school as determined by the state in consultation with a representative sample of local school districts, or who becomes a victim of a violent criminal offense, as determined by state law, while in school or on the school grounds, will be allowed to attend a safe public elementary or secondary school within the local education agency, including a public charter school, if the parent so desires.¹

All schools will be required to report this information as part of the annual report required by Ark. Code Ann. §6-15-2006 beginning in the 2020-2021 school year. In preparation for the required reporting, the Division of Elementary and Secondary Education (DESE) proposes to gather data during the 2019-2020 school year to determine thresholds for the identification of persistently dangerous schools.

Pilot Year

The Division of Elementary and Secondary Education (DESE) is establishing a pilot year to explore the Unsafe School Choice Option and data to inform designations of Persistently Dangerous Schools. Schools are required to report the information above in the School Information System (SIS) as part of **the Cycle 7 submission** in the 2019-2020 school year. Accuracy in reporting is of paramount importance because the 2019-2020 data reported will be used to determine which schools fall into the designation of Persistently Dangerous Schools in the 2020-2021 school year. Standard 3-A.3 of the Standards for Accreditation requires schools to timely report data for each cycle in SIS.

Schools are encouraged to submit feedback to DESE's Division of Public School Accountability concerning the implementation of this guidance. Please contact Ms. Otistene Smith at 501-683-5423 or Otistene.Smith@arkansas.gov.

Definitions

"Violent criminal offenses" as used in this guidance means the following criminal offenses against a person when they occur on a school campus or at a school-sanctioned event:

- **Aggravated Assault** as defined in Ark. Code Ann. § 5-13-204;
- **Assault** in the first degree as defined in Ark. Code Ann. § 5-13-205;
- **Battery** in the first or second degree as defined in Ark. Code Ann. § 5-13-201 and 202;
- **Homicide** as defined in Ark. Code Ann. § 5-10-101—103;

¹ 20 U.S.C. 7912

- **Possession or concealment of a gun** as defined in Ark. Code Ann. § 6-21-608;
- **Rape** as defined in Ark. Code Ann. § 5-14-103; and
- **Robbery** as defined in Ark. Code Ann. § 5-12-101 et seq.

“Lack of capacity” means a program, class, grade level, or school building has reached at least ninety-five (95%) of the maximum authorized student population.

Proposed Requirements for the 2020-2021 School Year

Using the 2019-2020 data, DESE will create criteria for designating Persistently Dangerous Schools for purposes of the Unsafe School Choice Option. The Unsafe School Choice option operates as an intradistrict school choice option, but districts are strongly encouraged to work with other districts to facilitate interdistrict transfers when a student has been a victim of a violent crime on school grounds.

When DESE has information that a school meets the criteria for a Persistently Dangerous School, DESE shall provide the superintendent and local board of education the opportunity to report to DESE within thirty (30) calendar days on conditions in the school. After consideration of that written report and consultation with a representative sample of local educational agencies, DESE shall determine whether the school is a persistently dangerous school. DESE will notify the district superintendent and president of the local board of education of the DESE determination. Once a school has been designated a persistently dangerous school, it retains that designation for at least one (1) school year.

In the event a school in the district is identified by DESE as persistently dangerous, the district will provide notification to parents/guardians of all students attending the school. The notice will:

1. Be provided in written form to all parents/guardians within ten (10) school days of the date the district receives notice that the school has been identified by DESE as persistently dangerous;
2. Include this guidance document or a weblink to this guidance document;
 - a. If the school provides a weblink, the notice shall indicate that a copy of the document will be provided to the parent/guardian upon request free of charge.
3. Inform parents that there is another school to transfer to in the school district which offers instruction at the student’s grade level, OR inform parents that there is no other school to transfer to in the identified school district which offers instruction at the student’s grade level;
4. Indicate that a corrective action plan will be developed by the school for approval by DESE and will be posted on the district website within thirty (30) calendar days of approval under “State Required Information”;
5. Indicate that the plan will be implemented in a timely manner during the school year of the designation.

Student Victims of Violent Criminal Offenses

If a school or district cannot offer instruction at the student's grade level in any other school in the district due to a lack of capacity, any student who is a victim of a violent criminal offense committed against him or her while he or she was in or on the grounds of the public school that he or she attends shall be allowed to request a transfer to attend a school in another district which is not designated a persistently dangerous school provided the student requests a transfer within thirty (30) calendar days of the violent criminal offense. This transfer shall operate as a legal transfer under Ark. Code Ann. §6-18-307. Any such transfers to meet the public school choice requirements of ESSA will be provided in accordance with established school district board policy.

A parent/guardian is not required to transfer their child to another school.

APPENDIX

AGGRAVATED ASSAULT

§ 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 throat or neck or by blocking the nose or mouth of the other person.
- (b) Aggravated assault is a Class D felony.

ASSAULT

§ 5-13-205. Assault--First degree

- (a) A person commits assault in the first degree if he or she:
- (1) Recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person; or
 - (2) Purposely impedes or prevents the respiration of another person or the circulation of another person's blood by applying pressure on the throat or neck or by blocking the nose or mouth of the other person.
- (b) Assault in the first degree is a Class A misdemeanor.
- (c) It is a defense to prosecution under subdivision (a)(2) of this section if the other person consented to the impeding or prevention of his or her respiration or circulation of blood.

BATTERY IN THE FIRST OR SECOND DEGREE

§ 5-13-201. Battery--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 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)(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 Department of Correction or the Department of Community Correction.

§ 5-13-202. Battery--Second degree

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

- (1) With the purpose of causing physical injury to another person, the person causes serious physical injury to another person;
- (2) With the purpose of causing physical injury to another person, the person causes physical injury to another person by means of a deadly weapon other than a firearm;
- (3) The person recklessly causes serious physical injury to another person:
 - (A) By means of a deadly weapon; or
 - (B) While operating or in actual physical control of a motor vehicle 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
- (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 of the Department of Human Services;
 - (B) A teacher or other school employee while acting in the course of employment;
 - (C) An individual sixty (60) years of age or older or twelve (12) years of age or younger;
 - (D) An officer or employee of the state while the officer or employee of the state is acting in the performance of his or her lawful duty;
 - (E) While performing medical treatment or emergency medical services or while in the course of other employment relating to his or her medical training:
 - (i) A physician;
 - (ii) A person licensed as emergency medical services personnel, as defined in § 20-13-202;
 - (iii) A licensed or certified health care professional; or
 - (iv) Any other health care provider; or

- (F) An individual who is incompetent, as defined in § 5-25-101.
- (b) Battery in the second degree is a Class D felony.
- (c) As used in this section, “motorboat” means the same as defined in § 5-65-102.

HOMICIDE

§ 5-10-101. Capital murder

- (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.

§ 5-10-102. Murder--First degree

(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 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.

§ 5-10-103. Murder--Second degree

- (a) A person commits murder in the second degree if:
 - (1) The person knowingly causes the death of another person under circumstances manifesting extreme indifference to the value of human life; or
 - (2) With the purpose of causing serious physical injury to another person, the person causes the death of any person.
- (b) Murder in the second degree is a Class A felony.

POSSESSION OR CONCEALMENT OF A GUN

§ 6-21-608. Hiding drugs or guns

- (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) Whenever a school official discovers any gun or other firearm in any school-owned property assigned to the use of an identifiable student, that student shall be expelled for a period of not less than 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.

RAPE

§ 5-14-103. Rape

(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person:

(1) By forcible compulsion;

(2) Who is incapable of consent because he or she is:

(A) Physically helpless;

(B) Mentally defective; or

(C) Mentally incapacitated;

- (3)(A) Who is less than fourteen (14) years of age.
 - (B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or
- (4)(A) Who is a minor and the actor is the victim's:
 - (i) Guardian;
 - (ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;
 - (iii) Brother or sister of the whole or half blood or by adoption; or
 - (iv) Nephew, niece, or first cousin.
 - (B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.
- (b) It is no defense to a prosecution under subdivision (a)(3) or subdivision (a)(4) of this section that the victim consented to the conduct.
- (c)(1) Rape is a Class Y felony.
 - (2) Any person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.
- (d)(1) A court may issue a permanent no contact order when:
 - (A) A defendant pleads guilty or nolo contendere; or
 - (B) All of the defendant's appeals have been exhausted and the defendant remains convicted.
 - (2) If a 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.
- (e) A person convicted of rape is subject to § 9-10-121.

ROBBERY

§ 5-12-101. Physical force—Definition

As used in this chapter, “physical force” means any:

- (1) Bodily impact, restraint, or confinement; or
- (2) Threat of any bodily impact, restraint, or confinement.

§ 5-12-102. Robbery

- (a) A person commits robbery if, with the purpose of committing a felony or misdemeanor theft or resisting apprehension immediately after committing a felony or misdemeanor theft, the person employs or threatens to immediately employ physical force upon another person.
- (b) Robbery is a Class B felony.

§ 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.