

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H3/14/03 H3/21/03 S4/8/03*

# A Bill

Act 1461 of 2003  
HOUSE BILL 1981

5 By: Representative Penix  
6 *By: Senator Laverty*  
7

## For An Act To Be Entitled

8  
9 AN ACT TO ENHANCE THE PENALTY FOR DRIVING WHILE  
10 INTOXICATED IF A CHILD IS IN THE VEHICLE; AND FOR  
11 OTHER PURPOSES.  
12  
13

### Subtitle

14  
15 AN ACT TO ENHANCE THE PENALTY FOR  
16 DRIVING WHILE INTOXICATED IF A CHILD IS  
17 IN THE VEHICLE.  
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20  
21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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23 SECTION 1. Arkansas Code § 5-65-111(a) and (b), concerning prison  
24 terms under the Omnibus DWI Act, are amended to read as follows:

25 (a)(1) Any person who pleads guilty or nolo contendere to, or is found  
26 guilty of, violating § 5-65-103 may, for a first offense, be imprisoned for  
27 no less than twenty-four (24) hours and no more than one (1) year, except  
28 that the court may order public service in lieu of jail, and, in ~~such that~~ that  
29 instance, the court shall include the reasons therefore in its written order  
30 or judgment.

31 (2) However, if a passenger under sixteen (16) years of age was  
32 in the vehicle at the time of the offense, a person who pleads guilty or nolo  
33 contendere to, or is found guilty of, violating § 5-65-103 may, for a first  
34 offense, be imprisoned for no fewer than seven (7) days and no more than one  
35 (1) year, except that the court may order public service in lieu of jail,  
36 and, in that instance, the court shall include the reasons therefore in its



1 written order or judgment.

2 (b) Any person who pleads guilty or nolo contendere to, or is found  
3 guilty of, violating § 5-65-103 or any other equivalent penal law of another  
4 state or foreign jurisdiction shall be imprisoned or shall be ordered to  
5 perform public service in lieu of jail as follows:

6 (1)(A) For no fewer than seven (7) days but no more than one (1)  
7 year for the second offense occurring within five (5) years of the first  
8 offense or no fewer than thirty (30) days of community service.

9 (B)(i) However, if a person under sixteen (16) years of  
10 age was in the vehicle at the time of the offense, for no fewer than thirty  
11 (30) days but no more than one (1) year for the second offense occurring  
12 within five (5) years of the first offense or no fewer than sixty (60) days  
13 of community service.

14 (ii) If the court orders community service, the  
15 court shall clearly set forth in written findings the reasons for the order  
16 of community service;

17 (2)(A) For no fewer than ninety (90) days but no more than one  
18 (1) year for the third offense occurring within five (5) years of the first  
19 offense or no fewer than ninety (90) days of community service.

20 (B)(i) If a person under sixteen (16) years of age was in  
21 the vehicle at the time of the offense, for no fewer than one hundred twenty  
22 days (120) days but no more than one (1) year for the third offense occurring  
23 within five (5) years of the first offense or no fewer than one hundred  
24 twenty (120) days of community service.

25 (ii) If the court orders community service, the  
26 court shall clearly set forth in written findings the reasons for the order  
27 of community service;

28 (3)(A) For at least one (1) year but no more than six (6) years  
29 for the fourth offense occurring within five (5) years of the first offense  
30 or not less than one (1) year of community service and shall be guilty of a  
31 felony.

32 (B)(i) However, if a person under sixteen (16) years of  
33 age was in the vehicle at the time of the offense, for at least two (2) years  
34 but no more than six (6) years for the fourth offense occurring within five  
35 (5) years of the first offense or not less than two (2) years of community  
36 service and shall be guilty of a felony.

1 (ii) If the court orders community service, the  
2 court shall clearly set forth in written findings the reasons for the order  
3 of community service; and

4 (4)(A) For at least two (2) years but no more than ten (10)  
5 years for the fifth or subsequent offense occurring within five (5) years of  
6 the first offense or not less than two (2) years of community service and  
7 shall be guilty of a felony.

8 (ii) If the court orders community service, the  
9 court shall clearly set forth in written findings the reasons for the order  
10 of community service.

11 (B)(i) However, if a person under sixteen (16) years of  
12 age was in the vehicle at the time of the offense, for at least three (3)  
13 years but no more than ten (10) years for the fifth offense occurring within  
14 five (5) years of the first offense or not less than three (3) years of  
15 community service and shall be guilty of a felony.

16 (ii) If the court orders community service, the  
17 court shall clearly set forth in written findings the reasons for the order  
18 of community service.

19 SECTION 2. Arkansas Code § 5-65-111, concerning prison terms under the  
20 Omnibus DWI Act, is amended to add an additional subsection to read as  
21 follows:

22 (d) It is an affirmative defense to prosecution under subdivisions  
23 (a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(b) of this section that  
24 the person operating or in actual physical control of the motor vehicle was  
25 not more than two (2) years older than the passenger.

26 /s/ Penix

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29 APPROVED: 4/16/2003  
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