

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1294

As Engrossed: 2/5/2019

Bill Subtitle: RESTORING PROSECUTORIAL DISCRETION IN THE RESOLUTION OF DRIVING OR BOATING WHILE INTOXICATED CASES.

Basic Change :

Sponsor: Rep. Della Rossa

Currently § 5-65-107(a) requires an individual that is arrested for an offense of Driving While Intoxicated (DWI) or Boating While Intoxicated (BWI), § 5-65-103, to be tried on those charges or the individual must plead guilty to the charge and the charge cannot be reduced or dismissed. HB1294 repeals this requirement of § 5-65-107(a) and would allow courts or prosecutors to reduce a DWI or BWI to a lesser charge or to dismiss the charge.

Revenue Impact :

A reinstatement fee of one hundred and fifty dollars (\$150.00) is assessed to each DWI or BWI suspension. If a DWI or BWI charge is reduced to a lesser charge, then the overall dollar amount of reinstatement fees collected would be reduced.

Taxpayer Impact :

Taxpayers may be able to negotiate with the prosecutors or courts for a reduced charge from the DWI or BWI citation issued by law enforcement.

Resources Required :

No additional resources would be required.

Time Required :

No additional time is required to implement this bill.

Procedural Changes :

Driver Services employees and online court personnel will need training in order to accurately modify and update a driving record if DWI or BWI charges are reduced to a lesser charge.

Other Comments :

None.

Legal Analysis :

Current Arkansas law does not allow a DWI charge to be reduced to a lesser charge. HB1282 seeks to allow prosecutors discretion to dismiss entirely or reduce a DWI to a lesser charge (e.g. reckless or careless driving). HB1282 removes the restriction requiring a person charged with DWI to be tried on the charge or to plead to the charge.

Arkansas law § 27-23-128 and Federal law 49 CFR § 384.226 prohibits a court from masking,

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deferring imposition of sentence, or allowing an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State. It is unclear if the U.S. Department of Transportation would determine that providing prosecutorial discretion to reduce or dismiss a DWI offense would violate 49 CFR § 384.226.