

**ARKANSAS SENATE**  
90th General Assembly - Regular Session, 2015  
**Amendment Form**

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**Subtitle of Senate Bill No. 64**

TO PROVIDE FOR AN ENHANCED PENALTY FOR THE OFFENSE OF DRIVING WHILE INTOXICATED  
WHEN A PERSON CAUSES AN ACCIDENT OR DRIVES WITHOUT A DRIVER'S LICENSE IN EFFECT  
WHILE INTOXICATED.

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**Amendment No. 3 to Senate Bill No. 64**

Amend Senate Bill No. 64 as engrossed, S2/3/15 (version: 02/03/2015 9:49:20 AM):

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 5-65-111, as amended by Act 299 of 2015, is amended to read as follows:

5-65-111. Sentencing – Periods of incarceration – Exception.

(a)(1)(A) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103, for a first offense, is upon conviction guilty of an unclassified misdemeanor and may be imprisoned for not less than twenty-four (24) hours but no more than one (1) year.

(B) The court may order public service instead of imprisonment and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in the court's written order or judgment.

(2)(A) ~~If a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense, a~~ A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 is upon conviction guilty of an unclassified misdemeanor and may be imprisoned for not less than seven (7) days but no more than one (1) year if:

(i) A passenger under sixteen (16) years of age was in the motor vehicle or motorboat;

(ii) The person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(B) ~~(B)~~ The court may order public service instead of imprisonment and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in the court's written order or judgment.

(b)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a second offense occurring within five (5) years of the first offense is upon conviction guilty of an unclassified



misdemeanor and may be imprisoned for not less than:

(A) Seven (7) days but no more than one (1) year; or

(B) Thirty (30) days but no more than one (1) year if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(2) The court may order public service instead of imprisonment in the following manner and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than thirty (30) days; or

(B) Not less than sixty (60) days if:

(i) a A passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense;

(ii) The person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(c)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a third offense occurring within five (5) years of the first offense is upon conviction guilty of an unclassified misdemeanor and may be imprisoned for not less than:

(A) Ninety (90) days but no more than one (1) year; or

(B) One hundred twenty (120) days but no more than one (1) year if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(2) The court may order public service instead of imprisonment in the following manner and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than ninety (90) days; or

(B) Not less than one hundred twenty (120) days if:

(i) a A passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense;

(ii) The person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(d)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a fourth offense occurring within five (5) years of the first offense is upon conviction guilty of an unclassified felony and may be imprisoned for not less than:

(A) One (1) year but no more than six (6) years; or

(B) Two (2) years but no more than six (6) years if:

(i) a A passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense;

(ii) The person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(2) The court may order public service instead of imprisonment in the following manner and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than one (1) year but no more than six (6) years; or

(B) Not less than two (2) years but no more than six (6) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(e)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a fifth or subsequent offense occurring within five (5) years of the first offense is upon conviction guilty of an unclassified felony and may be imprisoned for no fewer than:

(A) Two (2) years but no more than ten (10) years; or

(B) Three (3) years but no more than ten (10) years if:

(i) a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense;

(ii) The person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(2) The court may order public service instead of imprisonment in the following manner and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than two (2) years but no more than ten (10) years; or

(B) Not less than three (3) years but no more than ten (10) years if:

(i) a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense;

(ii) The person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(f)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a sixth or subsequent offense occurring within ten (10) years of the first offense is upon conviction guilty of a Class B felony.

(2) The court may order public service instead of imprisonment in the following manner and, if the court orders public service, the court shall include the reasons for the order of public service instead of imprisonment in its written order or judgment:

(A) Not less than two (2) years but no more than ten (10) years; or

(B) Not less than three (3) years but no more than ten (10) years if:

(i) a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense;

(ii) The person was driving on a suspended or

revoked driver's license or was driving without having a driver's license in effect; or

(iii) The person caused property damage or physical injury to a person.

(g) A certified judgment of conviction of driving or boating while intoxicated or other equivalent offense from another state or jurisdiction may be used to enhance the penalties as a previous offense under this section.

(h) For any arrest or offense occurring before the effective date of this act, but that has not reached a final disposition as to judgment in court, the offense shall be decided under the law in effect at the time the offense occurred, and the defendant is subject to the penalty provisions in effect at that time and not under the provisions of this section.

(i) It is an affirmative defense to prosecution under subdivisions (a)(2)(A), (b)(1)(B), (c)(1)(B), (d)(1)(B), and (e)(1)(B) of this section that the person operating or in actual physical control of the motor vehicle or motorboat was not more than two (2) years older than the passenger.

(j)(1) A prior conviction for § 5-10-105(a)(1)(A) or (B) is considered a previous offense for purposes of this section.

(2) A prior conviction under the former § 5-76-102 is considered a previous offense for purposes of this section only if the current offense is operating a motorboat on the waters of this state while intoxicated."

The Amendment was read the first time, rules suspended and read the second time and \_\_\_\_\_

By: Senator J. Woods

BPG/LNS - 03-05-2015 14:26:54

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Secretary