

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021

A Bill

HOUSE BILL 1062

4
5 By: Representatives L. Fite, Wardlaw
6 By: Senator K. Hammer
7

8 For An Act To Be Entitled

9 AN ACT TO INCREASE THE LOOKBACK PERIOD FOR PRIOR
10 CONVICTIONS OF BOATING OR DRIVING WHILE INTOXICATED
11 FOR THE PURPOSE OF SENTENCE ENHANCEMENT; AND FOR
12 OTHER PURPOSES.

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14 **Subtitle**

16 TO INCREASE THE LOOKBACK PERIOD FOR PRIOR
17 CONVICTIONS OF BOATING OR DRIVING WHILE
18 INTOXICATED FOR THE PURPOSE OF SENTENCE
19 ENHANCEMENT.

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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 is amended to read as follows:
24 5-65-111. Sentencing – Periods of incarceration – Exception.

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26 (a)(1) A person who pleads guilty or nolo contendere to or is found
27 guilty of violating § 5-65-103, for a first offense, ~~is~~ upon conviction is
28 guilty of an unclassified misdemeanor and may be imprisoned for not less
29 than:

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31 (A) Twenty-four (24) hours but no more than one (1) year;

32 or

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34 (B) Seven (7) 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.

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36 (2) The court may order public service instead of imprisonment
and, if the court orders public service, the court shall include the reasons



1 for the order of public service instead of imprisonment in the court's
2 written order or judgment.

3 (b)(1) A person who pleads guilty or nolo contendere to or is found
4 guilty of violating § 5-65-103 for a second offense occurring within ~~five (5)~~
5 ten (10) years of the first offense ~~is~~ upon conviction is guilty of an
6 unclassified misdemeanor and may be imprisoned for not less than:

7 (A) Seven (7) days but no more than one (1) year; or
8 (B) Thirty (30) days but no more than one (1) year if a
9 passenger under sixteen (16) years of age was in the motor vehicle or
10 motorboat at the time of the offense.

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

15 (A) Not less than thirty (30) days; or
16 (B) Not less than sixty (60) days if a passenger under
17 sixteen (16) years of age was in the motor vehicle or motorboat at the time
18 of the offense.

19 (c)(1) A person who pleads guilty or nolo contendere to or is found
20 guilty of violating § 5-65-103 for a third offense occurring within ~~five (5)~~
21 ten (10) years of the first offense ~~is~~ upon conviction is guilty of an
22 unclassified misdemeanor and may be imprisoned for not less than:

23 (A) Ninety (90) days but no more than one (1) year; or
24 (B) One hundred twenty (120) days but no more than one (1)
25 year if a passenger under sixteen (16) years of age was in the motor vehicle
26 or motorboat at the time of the offense.

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

31 (A) Not less than ninety (90) days; or
32 (B) Not less than one hundred twenty (120) days if a
33 passenger under sixteen (16) years of age was in the motor vehicle or
34 motorboat at the time of the offense.

35 (d) A person who pleads guilty or nolo contendere to or is found
36 guilty of violating § 5-65-103 for a fourth offense occurring within ~~five (5)~~

1 ten (10) years of the first offense ~~is~~ upon conviction is guilty of an
2 unclassified felony and may be imprisoned for not less than:

3 (1) One (1) year but no more than six (6) years; or
4 (2) Two (2) years but no more than six (6) years if a passenger
5 under sixteen (16) years of age was in the motor vehicle or motorboat at the
6 time of the offense.

7 (e) A person who pleads guilty or nolo contendere to or is found
8 guilty of violating § 5-65-103 for a fifth or subsequent offense occurring
9 within ~~five (5)~~ ten (10) years of the first offense ~~is~~ upon conviction is
10 guilty of an unclassified felony and may be imprisoned for no fewer than:

11 (1) Two (2) years but no more than ten (10) years; or
12 (2) Three (3) years but no more than ten (10) years if a
13 passenger under sixteen (16) years of age was in the motor vehicle or
14 motorboat at the time of the offense.

15 (f) A person who pleads guilty or nolo contendere to or is found
16 guilty of violating § 5-65-103 for a sixth or subsequent offense occurring
17 within ~~five (5)~~ twenty (20) years of the first offense ~~is~~ upon conviction is
18 guilty of a Class B felony.

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

23 (h) For any arrest or offense occurring before July 22, 2015, ~~but the~~ the
24 effective date of this act that has not reached a final disposition as to
25 judgment in court, the offense shall be decided under the law in effect at
26 the time the offense occurred, and the defendant is subject to the penalty
27 provisions in effect at that time and not under the provisions of this
28 section.

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

33 (j)(1) A prior conviction for § 5-10-105(a)(1)(A) or § 5-10-
34 105(a)(1)(B) is considered a previous offense for purposes of this section.

35 (2) A prior conviction under former § 5-76-102 is considered a
36 previous offense for purposes of this section only if the current offense is

1 operating a motorboat on the waters of this state while intoxicated.

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