



*Arkansas
Sentencing
Commission*

**Impact Assessment for HB1668
Sponsored by Representative Lemons**

Subtitle CONCERNING THE OFFENSE OF DRIVING OR BOATING WHILE INTOXICATED; AND CONCERNING THE DISPOSITION OF A DEFENDANT CONVICTED OF DRIVING OR BOATING WHILE INTOXICATED.

Impact Summary¹ Cannot be determined.

Change from current law² Amends Arkansas Code Annotated § 5-65-111 (d) through (f), concerning the sentencing range for felony level offenses of driving or boating while intoxicated to remove community service as a sentence option. The remaining available sentences under the proposed bill are as follows:

- For a fourth offense within five years, not less than one (1) year but no more than six (6) years imprisonment at the Arkansas Department of Correction (ADC). (Minimum sentence is two (2) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense).
- For a fifth or subsequent offense within five years, not less than two (2) years but no more than ten (10) years imprisonment at ADC. (Minimum sentence is three (3) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense).
- For a sixth or subsequent offense within ten years, the punishment range proscribed for a Class B felony.

Amends A.C.A. § 16-98-303(c) concerning what offenders are disqualified from a drug court program, to add that a drug court program shall not be available to an offender with a felony violation of driving or boating while intoxicated, A.C.A. § 5-65-103.

Impact Information

The impact of this proposed bill on the correctional resources of the state lies in the cost of housing an inmate who would otherwise have been sentenced to community service for a felony level DWI/BWI offense. According to Arkansas Community Correction (ACC) data does not exist as to the number of offenders serving a sentence of community service for felony level DWI/BWI. ACC administers community service only if the offender is also placed on probation. ACC reports that in 2016, there were sixty-two (62) offenders sentenced to probation for felony level DWI/BWI.

¹ This impact assessment was prepared (3/2/2017, 7:36 a.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

A.C.A. § 5-65-103. Driving or boating while intoxicated.

(a) (1) It is unlawful and punishable as provided in this chapter for a person who is intoxicated to operate or be in actual physical control of a motorboat on the waters of this state or a motor vehicle.

(2) It is unlawful and punishable as provided in this chapter for a person to operate or be in actual physical control of a motorboat on the waters of this state or a motor vehicle if at that time the alcohol concentration in the person's breath or blood was eight hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204.

(b) The consumption of alcohol or the possession of an open container of alcohol aboard a motorboat does not in and of itself constitute probable cause that the person committed the offense of boating while intoxicated.

(c) An alcohol-related offense under this section is a strict liability offense.

HISTORY: Acts 1983, No. 549, § 3; A.S.A. 1947, § 75-2503; Acts 2001, No. 561, § 2; 2013, No. 361, § 2; 2015, No. 299, § 6; 2015 (1st Ex. Sess.), No. 6, §§ 3, 4.

A.C.A. § 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 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.

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

(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 a passenger under sixteen (16) years of age was in the motor

vehicle or motorboat at the time of the offense.

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

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

(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 July 22, 2015, 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 § 5-10-105(a)(1)(B) is considered a previous offense for purposes of this section.

(2) A prior conviction under 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.

HISTORY: Acts 1983, No. 549, § 4; A.S.A. 1947, § 75-2504; Acts 1997, No. 1236, § 1; 1999, No. 1077, § 11; 2001, No. 1206, § 1; 2003, No. 1461, §§ 1, 2; 2009, No. 650, § 3; 2013, No. 1268, § 1; 2015, No. 299, § 6.