

1 State of Arkansas
2 80th General Assembly
3 Regular Session, 1995
4 By: Representative Vess

A Bill

HOUSE BILL 2103

For An Act To Be Entitled

"AN ACT TO AMEND ARKANSAS CODE ANNOTATED § 5-65-111 TO
PROVIDE FOR SENTENCING PROCEDURES FOR RECIDIVIST DWI
OFFENDERS; AND FOR OTHER PURPOSES."

Subtitle

"TO PROVIDE FOR SENTENCING PROCEDURES
FOR RECIDIVIST DWI OFFENDERS."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Annotated § 5-65-111 is amended to read as follows:

"5-65-111. Prison terms - Exception.

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

(b) Any person who pleads guilty, nolo contendere, or is found guilty of violating § 5-65-103 shall be imprisoned:

(1) For no less than seven (7) days and no more than one (1) year for the second offense occurring within three (3) years of the first offense;

(2) For no less than ninety (90) days nor more than one (1) year for the third offense occurring within three (3) years of the first offense;

(3) For at least one (1) year but no more than six (6) years for the fourth or subsequent offense occurring within three (3) years of the first offense and shall be guilty of a felony.

1 (c) For purposes of fine and incarceration, DWI first, second, or
2 third offense is an unclassified misdemeanor. For all other purposes, it is
3 a Class A misdemeanor; however, nothing in this subsection shall be construed
4 to authorize probation or suspension of sentence for such an offense.

5 (d) For purposes of fine and imprisonment, DWI fourth or subsequent
6 offense is an unclassified felony. For all other purposes, it is a Class D
7 felony; however, nothing in this subsection shall be construed to authorize
8 probation or suspension or sentence for such an offense.

9 (e) When prior convictions or findings of guilt under § 5-65-103 are
10 utilized to enhance an offender_s sentence pursuant to subsections (b)(1),
11 (2), or (3), the prior convictions or findings of guilt shall not be regarded
12 as elements of the offense of DWI but rather shall be regarded as a means of
13 enhancing sentence as is the case with prior felony convictions or findings
14 of guilt under Arkansas Code Annotated § 5-4-501 et seq., the habitual
15 offender statute. The fact that a prior conviction or finding of guilt under
16 § 5-65-103 in municipal court is appealed to circuit court shall not preclude
17 its use as a means of enhancing sentence. In cases of a trial by jury, where
18 prior convictions or findings of guilt under § 5-65-103 are utilized to
19 enhance an offender_s sentence for DWI, the jury shall first determine
20 whether the offender is guilty of the current DWI offense with which he is
21 being charged and shall not be instructed with respect to punishment on that
22 charge. If the jury returns a verdict of guilt on that charge, then the
23 trial court, out of the hearing of the jury, shall, in addition to
24 determining the number and dates of offenses within a period of three (3)
25 years of the date of the first offense as is currently provided for by law,
26 hear evidence of the defendant_s previous convictions or findings of guilt
27 under § 5-65-103 and shall determine the number of previous convictions or
28 findings of guilt, if any. Defendant shall have the right to hear and
29 controvert this evidence and to offer evidence in his support. Each
30 conviction or finding of guilt must be found to exist beyond a reasonable
31 doubt and the trial court shall determine whether the defendant was
32 represented by counsel or waived his right to counsel with respect to each
33 conviction or finding of guilt. The trial court shall then instruct the jury
34 as to the number of previous convictions or findings of guilt and to the
35 statutory sentencing range. The jury may be advised as to the nature of the

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