

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997  
4

As Engrossed: H2/12/97

## A Bill

HOUSE BILL 1552

5 By: Representatives Jeffress, Rodgers, and Teague  
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### For An Act To Be Entitled

9 "AN ACT TO AMEND ARKANSAS CODE 5-65-111 TO PROVIDE FOR  
10 SENTENCING PROCEDURES FOR RECIDIVIST DWI OFFENDERS."  
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### Subtitle

13 "TO PROVIDE FOR SENTENCING PROCEDURES  
14 FOR RECIDIVIST DWI OFFENDERS."  
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16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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18 SECTION 1. Arkansas Code 5-65-111 is amended to add the following:

19 "(c) When prior convictions or findings of guilt under 5-65-103 are  
20 utilized to enhance an offenders sentence pursuant to subsections (b)(1),(2),  
21 or (3), the prior convictions or findings of guilt shall not be regarded as  
22 elements of the offense of DWI but rather shall be regarded as a means of  
23 enhancing sentence as is the case with prior felony convictions or findings of  
24 guilt under Arkansas Code 5-4-501 et seq., the habitual offender statute. The  
25 fact that a prior conviction or finding of guilt under 5-65-103 in municipal  
26 court is appealed to circuit court shall not preclude its use as a means of  
27 enhancing sentence. In cases of a trial by jury, where prior convictions or  
28 findings of guilt under 5-65-103 are utilized to enhance an offenders  
29 sentence for DWI, the jury shall first determine whether the offender is  
30 guilty of the current DWI offense with which he is being charged and shall not  
31 be instructed with respect to punishment on that charge. If the jury returns  
32 a verdict of guilt on that charge, then the trial court, out of the hearing of  
33 the jury, shall, in addition to determining the number and dates of offenses  
34 within a period of three (3) years of the date of the first offense as is  
35 currently provided for by law, hear evidence of the defendants previous  
36 convictions or findings of guilt under 5-65-103 and shall determine the number

1 of previous convictions or findings of guilt, if any. Defendant shall have the  
2 right to hear and controvert this evidence and to offer evidence in his  
3 support. Each conviction or finding of guilt must be found to exist beyond a  
4 reasonable doubt and the trial court shall determine whether the defendant was  
5 represented by counsel or waived his right to counsel with respect to each  
6 conviction or finding of guilt. The trial court shall then instruct the jury  
7 as to the number of previous convictions or findings of guilt and the  
8 statutory sentencing range. The jury may be advised as to the nature of the  
9 previous convictions or findings of guilt and the date and place thereof. The  
10 jury shall retire again and then determine a sentence within the statutory  
11 range.

12 (d) For purposes of determining whether an offense is a second or  
13 subsequent offense under 5-65-111(b)(1),(2), or (3), a conviction or finding  
14 of guilt of an offense from another jurisdiction shall constitute a previous  
15 offense if it is comparable to an offense under 5-65-103. The determination  
16 of whether a conviction from another jurisdiction is comparable to an offense  
17 under 5-65-103 shall lie within the discretion of the trial judge at the time  
18 of sentencing."

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20 SECTION 2. Legislative intent. To the extent that the case of Peters  
21 v. State, 286 Ark. 421, 692 S.W.2d 243 (1985) is in conflict with this act,  
22 that case is legislatively overruled.

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24 SECTION 3. All provisions of this act of a general and permanent  
25 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
26 Code Revision Commission shall incorporate the same in the Code.

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28 SECTION 4. If any provision of this act or the application thereof to  
29 any person or circumstance is held invalid, such invalidity shall not affect  
30 other provisions or applications of the act which can be given effect without  
31 the invalid provision or application, and to this end the provisions of this  
32 act are declared to be severable.

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34 SECTION 5. All laws and parts of laws in conflict with this act are  
35 hereby repealed.

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/s/Rep. Jeffress et al