

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 86th General Assembly  
3 Regular Session, 2007  
4

# A Bill

HOUSE BILL 2348

5 By: Representative Adcock  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO INCREASE THE REVIEW PERIOD FOR  
10 ENHANCEMENT OF PENALTIES FOR VIOLATIONS OF THE  
11 OMNIBUS DWI ACT; AND FOR OTHER PURPOSES.  
12

## Subtitle

13  
14 TO INCREASE THE REVIEW PERIOD FOR  
15 ENHANCEMENT OF PENALTIES FOR VIOLATIONS  
16 OF THE OMNIBUS DWI ACT.  
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18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
20

21 SECTION 1. Arkansas Code § 5-65-104 is amended to read as follows:

22 5-65-104. Seizure, suspension, and revocation of license - Temporary  
23 permits - Ignition interlock restricted license.

24 (a)(1) At the time of arrest for operating or being in actual physical  
25 control of a motor vehicle while intoxicated or while there was an alcohol  
26 concentration of eight-hundredths (0.08) or more in the person's breath or  
27 blood, as provided in § 5-65-103, the arrested person shall immediately  
28 surrender his or her license, permit, or other evidence of driving privilege  
29 to the arresting law enforcement officer as provided in § 5-65-402.

30 (2) The Office of Driver Services or its designated official  
31 shall suspend or revoke the driving privilege of an arrested person or shall  
32 suspend any nonresident driving privilege of an arrested person, as provided  
33 in § 5-65-402. The suspension or revocation shall be based on the number of  
34 previous offenses as follows:

35 (A) Suspension for:

36 (i) One hundred twenty (120) days for the first



1 offense of operating or being in actual physical control of a motor vehicle  
 2 while intoxicated or while there was an alcohol concentration of at least  
 3 eight hundredths (0.08) but less than fifteen hundredths (0.15) by weight of  
 4 alcohol in the person's blood or breath, § 5-65-103;

5 (ii) Suspension for six (6) months for the first  
 6 offense of operating or being in actual physical control of a motor vehicle  
 7 while intoxicated by the ingestion of or by the use of a controlled  
 8 substance; and

9 (iii)(a) Suspension for one hundred eighty (180)  
 10 days for the first offense of operating or being in actual physical control  
 11 of a motor vehicle while intoxicated and while there was an alcohol  
 12 concentration of fifteen hundredths (0.15) or more by weight of alcohol in  
 13 the person's blood or breath.

14 (b) However, if the office allows the issuance  
 15 of an ignition interlock restricted license under § 5-65-118, the ignition  
 16 interlock restricted license shall be available immediately.

17 (c) The restricted driving permit provision of  
 18 § 5-65-120 does not apply to this suspension;

19 (B)(i) Suspension for twenty-four (24) months for a second  
 20 offense of operating or being in actual physical control of a motor vehicle  
 21 while intoxicated or while there was an alcohol concentration of eight  
 22 hundredths (0.08) or more by weight of alcohol in the person's blood or  
 23 breath, § 5-65-103, within ~~five (5)~~ ten (10) years of the first offense.

24 (ii) However, if the office allows the issuance of  
 25 an ignition interlock restricted license under § 5-65-118, the suspension  
 26 period for which no restricted license is available is a minimum of one (1)  
 27 year;

28 (C)(i) Suspension for thirty (30) months for the third  
 29 offense of operating or being in actual physical control of a motor vehicle  
 30 while intoxicated or while there was an alcohol concentration of eight  
 31 hundredths (0.08) or more by weight of alcohol in the person's blood or  
 32 breath, § 5-65-103, within ~~five (5)~~ ten (10) years of the first offense.

33 (ii) However, if the office allows the issuance of  
 34 an ignition interlock restricted license under § 5-65-118, the suspension  
 35 period for which no restricted license is available is a minimum of one (1)  
 36 year; and

1 (D) Revocation for four (4) years, during which no  
 2 restricted permits may be issued, for the fourth or subsequent offense of  
 3 operating or being in actual physical control of a motor vehicle while  
 4 intoxicated or while there was an alcohol concentration of eight hundredths  
 5 (0.08) or more by weight of alcohol in the person's blood or breath, § 5-65-  
 6 103, within ~~five (5)~~ ten (10) years of the first offense.

7 (3) If a person is a resident who is convicted of driving  
 8 without a license or permit to operate a motor vehicle and the underlying  
 9 basis for the suspension, revocation, or restriction of the license was for a  
 10 violation of § 5-65-103, in addition to any other penalties provided for  
 11 under law, the office may restrict the offender to only an ignition interlock  
 12 restricted license for a period of one (1) year prior to the reinstatement or  
 13 reissuance of a license or permit after the person would otherwise be  
 14 eligible for reinstatement or reissuance of the person's license.

15 (4) In order to determine the number of previous offenses to  
 16 consider when suspending or revoking the arrested person's driving  
 17 privileges, the office shall consider as a previous offense:

18 (A) Any conviction for an offense of operating or being in  
 19 actual physical control of a motor vehicle while intoxicated or while there  
 20 was an alcohol concentration of eight-hundredths (0.08) or more in the  
 21 person's breath or blood under § 5-65-103 or refusing to submit to a chemical  
 22 test under § 5-65-202 that occurred prior to July 1, 1996; ~~and~~

23 (B) Any suspension or revocation of driving privileges for  
 24 an arrest for operating or being in actual physical control of a motor  
 25 vehicle while intoxicated or while there is an alcohol concentration of  
 26 eight-hundredths (0.08) or more in the person's breath or blood under § 5-65-  
 27 103 or refusing to submit to a chemical test under § 5-65-202 occurring on or  
 28 after July 1, 1996, when the person was not subsequently acquitted of the  
 29 criminal charges; and

30 (C) For all arrests or offenses occurring before July 1,  
 31 2007, that have not reached a final disposition as to judgment in court, the  
 32 offenses shall be decided under the law in effect at the time the offense  
 33 occurred, and any defendant is subject to the penalty provisions in effect at  
 34 that time.

35 (b)(1)(A) Any person whose license is suspended or revoked pursuant to  
 36 this section is required to complete an alcohol education program or an

1 alcohol treatment program as approved by the Bureau of Alcohol and Drug Abuse  
 2 Prevention of the Division of Health of the Department of Health and Human  
 3 Services unless the charges are dismissed or the person is acquitted of the  
 4 charges upon which the suspension or revocation is based.

5 (B) If during the period of suspension or revocation under  
 6 subdivision (b)(1)(A) of this section the person commits an additional  
 7 violation of § 5-65-103, he or she is also required to complete an approved  
 8 alcohol education program or alcohol treatment program for each additional  
 9 violation, unless:

10 (i) The additional charges are dismissed; or

11 (ii) He or she is acquitted of the additional  
 12 charges.

13 (2) A person whose license is suspended or revoked pursuant to  
 14 this section shall furnish proof of attendance at and completion of the  
 15 alcohol education program or the alcohol treatment program required under  
 16 subdivision (b)(1) of this section before reinstatement of his or her  
 17 suspended or revoked driver's license or shall furnish proof of dismissal or  
 18 acquittal of the charge on which the suspension or revocation is based.

19 (3) Even if a person has filed a de novo petition for review  
 20 pursuant to former subsection (c) of this section, the person is entitled to  
 21 reinstatement of driving privileges upon complying with this subsection and  
 22 is not required to postpone reinstatement until the disposition of the de  
 23 novo review in circuit court has occurred.

24  
 25 SECTION 2. Arkansas Code §§ 5-65-111 and 5-56-112 are amended to read  
 26 as follows:

27 5-65-111. Prison terms - Exception.

28 (a)(1)(A) Any person who pleads guilty or nolo contendere to or is  
 29 found guilty of violating § 5-65-103, for a first offense, may be imprisoned  
 30 for no less than twenty-four (24) hours and no more than one (1) year.

31 (B) However, the court may order public service in lieu of  
 32 jail, and in that instance, the court shall include the reasons for the order  
 33 of public service in lieu of jail in the court's written order or judgment.

34 (2)(A) However, if a passenger under sixteen (16) years of age  
 35 was in the vehicle at the time of the offense, a person who pleads guilty or  
 36 nolo contendere to or is found guilty of violating § 5-65-103, for a first

1 offense, may be imprisoned for no fewer than seven (7) days and no more than  
 2 one (1) year.

3 (B) However, the court may order public service in lieu of  
 4 jail, and in that instance, the court shall include the reasons for the order  
 5 of public service in lieu of jail in the court's written order or judgment.

6 (b) Any person who pleads guilty or nolo contendere to or is found  
 7 guilty of violating § 5-65-103 or any other equivalent penal law of another  
 8 state or foreign jurisdiction shall be imprisoned or shall be ordered to  
 9 perform public service in lieu of jail as follows:

10 (1)(A) For no fewer than seven (7) days but no more than one (1)  
 11 year for the second offense occurring within ~~five (5)~~ ten (10) years of the  
 12 first offense or no fewer than thirty (30) days of community service.

13 (B)(i) However, if a person under sixteen (16) years of  
 14 age was in the vehicle at the time of the offense, for no fewer than thirty  
 15 (30) days but no more than one (1) year for the second offense occurring  
 16 within ~~five (5)~~ ten (10) years of the first offense or no fewer than sixty  
 17 (60) days of community service.

18 (ii) If the court orders community service, the  
 19 court shall clearly set forth in written findings the reasons for the order  
 20 of community service;

21 (2)(A) For no fewer than ninety (90) days but no more than one  
 22 (1) year for the third offense occurring within ~~five (5)~~ ten (10) years of  
 23 the first offense or no fewer than ninety (90) days of community service.

24 (B)(i) However, if a person under sixteen (16) years of  
 25 age was in the vehicle at the time of the offense, for no fewer than one  
 26 hundred twenty days (120) days but no more than one (1) year for the third  
 27 offense occurring within ~~five (5)~~ ten (10) years of the first offense or no  
 28 fewer than one hundred twenty (120) days of community service.

29 (ii) If the court orders community service, the  
 30 court shall clearly set forth in written findings the reasons for the order  
 31 of community service;

32 (3)(A) For at least one (1) year but no more than six (6) years  
 33 for the fourth offense occurring within ~~five (5)~~ ten (10) years of the first  
 34 offense or not less than one (1) year of community service and is guilty of a  
 35 felony.

36 (B)(i) However, if a person under sixteen (16) years of

1 age was in the vehicle at the time of the offense, for at least two (2) years  
 2 but no more than six (6) years for the fourth offense occurring within ~~five~~  
 3 ~~(5)~~ ten (10) years of the first offense or not less than two (2) years of  
 4 community service and is guilty of a felony.

5 (ii) If the court orders community service, the  
 6 court shall clearly set forth in written findings the reasons for the order  
 7 of community service; and

8 (4)(A)(i) For at least two (2) years but no more than ten (10)  
 9 years for the fifth or subsequent offense occurring within ~~five (5)~~ ten (10)  
 10 years of the first offense or not less than two (2) years of community  
 11 service and is guilty of a felony.

12 (ii) If the court orders community service, the  
 13 court shall clearly set forth in written findings the reasons for the order  
 14 of community service.

15 (B)(i) However, if a person under sixteen (16) years of  
 16 age was in the vehicle at the time of the offense, for at least three (3)  
 17 years but no more than ten (10) years for the fifth offense occurring within  
 18 ~~five (5)~~ ten (10) years of the first offense or not less than three (3) years  
 19 of community service and is guilty of a felony.

20 (ii) If the court orders community service, the  
 21 court shall clearly set forth in written findings the reasons for the order  
 22 of community service.

23 (c) For any arrest or offense occurring before ~~July 30, 1999~~ July 1,  
 24 2007, but that has not reached a final disposition as to judgment in court,  
 25 the offense shall be decided under the law in effect at the time the offense  
 26 occurred, and any defendant is subject to the penalty provisions in effect at  
 27 that time ~~and not under the provisions of this section.~~

28 (d) It is an affirmative defense to prosecution under subdivisions  
 29 (a)(2), (b)(1)(B), (b)(2)(B), (b)(3)(B), and (b)(4)(B) of this section that  
 30 the person operating or in actual physical control of the motor vehicle was  
 31 not more than two (2) years older than the passenger.

32  
 33 5-65-112. Fines.

34 (a) Any person who pleads guilty or nolo contendere to or is found  
 35 guilty of violating § 5-65-103 shall be fined:

36 (1) No less than one hundred fifty dollars (\$150) and no more

1 than one thousand dollars (\$1,000) for the first offense;

2 (2) No less than four hundred dollars (\$400) and no more than  
 3 three thousand dollars (\$3,000) for the second offense occurring within ~~five~~  
 4 ~~(5)~~ ten (10) years of the first offense; and

5 (3) No less than nine hundred dollars (\$900) and no more than  
 6 five thousand dollars (\$5,000) for the third or subsequent offense occurring  
 7 within ~~five (5)~~ ten (10) years of the first offense.

8 (b) For all arrests or offenses occurring before July 1, 2007, that  
 9 have not reached a final disposition as to judgment in court, the offenses  
 10 shall be decided under the law in effect at the time the offense occurred,  
 11 and any defendant is subject to the penalty provisions in effect at that  
 12 time.

13  
 14 SECTION 3. Arkansas Code § 5-65-120 is amended to read as follows:  
 15 5-65-120. Restricted driving permit.

16 (a) Following an administrative hearing for suspension or revocation  
 17 of a driver's license as provided for in § 5-65-402, or upon a request of a  
 18 person whose privilege to drive has been denied or suspended, the Office of  
 19 Driver Services or its designated agent may modify the denial or suspension  
 20 in a case of extreme and unusual hardship by the issuance of a restricted  
 21 driving permit when, upon a review of the person's driving record for a time  
 22 period of ~~five (5)~~ ten (10) years prior to the current suspension or denial  
 23 of driving privilege, at the discretion of the office or its designated agent  
 24 it is determined that:

25 (1) The person:

- 26 (A) Is not a multiple traffic law offender; or
- 27 (B) Does not present a threat to the general public; and

28 (2) No other adequate means of transportation exists for the  
 29 person except to allow driving in any of the following situations:

- 30 (A) To and from the person's place of employment;
- 31 (B) In the course of the person's employment;
- 32 (C) To and from an educational institution for the purpose  
 33 of attending a class if the person is enrolled and regularly attending a  
 34 class at the institution;

35 (D) To and from the alcohol safety education and treatment  
 36 course for drunk drivers; or

1 (E) To and from a hospital or clinic for medical treatment  
 2 or care for an illness, disease, or other medical condition of the person or  
 3 a family member.

4 (b) The restricted driving permit shall state the specific times and  
 5 circumstances under which driving is permitted.

6 (c) The restricted driving permit shall not be granted to any person  
 7 suspended for a second or subsequent offense of violating § 5-65-103, § 5-65-  
 8 205, § 5-65-303, or § 5-65-310.

9 (d) For any arrest or offense occurring before ~~July 30, 1999~~ July 1,  
 10 2007, and the offense has not reached a final disposition as to judgment in  
 11 court, the offense shall be decided under the law in effect at the time the  
 12 offense occurred, and any defendant is subject to the penalty provisions in  
 13 effect at that time ~~and not under the provisions of this section.~~

14  
 15 SECTION 4. Arkansas Code § 5-65-205 is amended to read as follows:  
 16 5-65-205. Refusal to submit.

17 (a) If a person under arrest refuses upon the request of a law  
 18 enforcement officer to submit to a chemical test designated by the law  
 19 enforcement agency, as provided in § 5-65-202, no chemical test shall be  
 20 given, and the person's motor vehicle operator's license shall be seized by  
 21 the law enforcement officer, and the law enforcement officer shall  
 22 immediately deliver to the person from whom the motor vehicle operator's  
 23 license was seized a temporary driving permit, as provided by § 5-65-402.

24 (b) The Office of Driver Services shall then proceed to suspend or  
 25 revoke the driving privilege of the arrested person, as provided in § 5-65-  
 26 402. The suspension shall be as follows:

27 (1)(A)(i) Suspension for one hundred eighty (180) days for the  
 28 first offense of refusing to submit to a chemical test of blood, breath, or  
 29 urine for the purpose of determining the alcohol or controlled substance  
 30 content of the person's blood or breath.

31 (ii) However, if the office allows the issuance of  
 32 an ignition interlock restricted license under § 5-65-118, the ignition  
 33 interlock restricted license shall be available immediately.

34 (iii) The restricted driving permit provision of §  
 35 5-65-120 does not apply to this suspension.

36 (B) The office, in addition to any other penalty, shall



1 deny to that person the issuance of an operator's license until that person  
 2 has been issued an ignition interlock restricted license for a period of six  
 3 (6) months;

4 (2) Suspension for two (2) years, during which no restricted  
 5 permit may be issued, for a second offense of refusing to submit to a  
 6 chemical test of blood, breath, or urine for the purposes of determining the  
 7 alcohol or controlled substance content of the person's blood or breath  
 8 within ~~five (5)~~ ten (10) years of the first offense;

9 (3) Revocation for three (3) years, during which no restricted  
 10 permit may be issued, for the third offense of refusing to submit to a  
 11 chemical test of blood, breath, or urine for the purpose of determining the  
 12 alcohol or controlled substance content of the person's blood within ~~five (5)~~  
 13 ten (10) years of the first offense; and

14 (4) Lifetime revocation, during which no restricted permit may  
 15 be issued, for the fourth or subsequent offense of refusing to submit to a  
 16 chemical test of blood, breath, or urine for the purpose of determining the  
 17 alcohol or controlled substance content of the person's blood or breath  
 18 within ~~five (5)~~ ten (10) years of the first offense.

19 (c) For any arrest or offense occurring before ~~July 30, 1999~~ July 1,  
 20 2007, but that has not reached a final disposition as to judgment in court:

21 (1) The offense shall be decided under the law in effect at the  
 22 time the offense occurred; and

23 (2) Any defendant is subject to the penalty provisions in effect  
 24 at that time ~~and not under the provisions of this section.~~

25 (d) In order to determine the number of previous offenses to consider  
 26 when suspending or revoking the arrested person's driving privileges, the  
 27 office shall consider as a previous offense:

28 (1) Any conviction for an offense of operating or being in  
 29 actual physical control of a motor vehicle while intoxicated or in violation  
 30 of § 5-65-103 or refusing to submit to a chemical test which occurred prior  
 31 to July 1, 1996; and

32 (2) Any suspension or revocation of driving privileges for an  
 33 arrest for a violation of § 5-65-103 or violation of § 5-65-205(a) occurring  
 34 on or after July 1, 1996, when the person was subsequently convicted of the  
 35 criminal charge.

36 (e) In addition to any other penalty provided for in this section:

1 (1) If the person is a resident without a license or permit to  
2 operate a motor vehicle in this state, the office shall deny to that person  
3 the issuance of a license or permit for a period of six (6) months for a  
4 first offense; and

5 (2) For a second or subsequent offense by a resident without a  
6 license or permit to operate a motor vehicle, the office shall deny to that  
7 person the issuance of a license or permit for a period of one (1) year.

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9 SECTION 5. EMERGENCY CLAUSE. It is found and determined by the  
10 General Assembly of the State of Arkansas that persons driving while  
11 intoxicated pose a substantial risk to the citizens of the State of Arkansas;  
12 that many of the persons driving while intoxicated are repeat offenders; and  
13 that this act is immediately necessary to deter future acts of driving while  
14 intoxicated. Therefore, an emergency is declared to exist, and this act  
15 being necessary for the preservation of the public peace, health, and safety  
16 shall become effective on July 1, 2007.

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