

1 State of Arkansas  
2 90th General Assembly  
3 Regular Session, 2015  
4

# A Bill

SENATE BILL 64

5 By: Senator J. Woods  
6 By: Representative D. Whitaker  
7

## For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR AN ENHANCED PENALTY FOR THE  
10 OFFENSE OF DRIVING WHILE INTOXICATED WHEN A PERSON  
11 CAUSES AN ACCIDENT OR DRIVES WITHOUT A DRIVER'S  
12 LICENSE IN EFFECT WHILE INTOXICATED; AND FOR OTHER  
13 PURPOSES.  
14  
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## Subtitle

16 TO PROVIDE FOR AN ENHANCED PENALTY FOR  
17 THE OFFENSE OF DRIVING WHILE INTOXICATED  
18 WHEN A PERSON CAUSES AN ACCIDENT OR  
19 DRIVES WITHOUT A DRIVER'S LICENSE IN  
20 EFFECT WHILE INTOXICATED.  
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23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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26 SECTION 1. Arkansas Code § 5-65-111 is amended to read as follows:

27 5-65-111. ~~Prison~~ Jail terms – Exception – Enhancements.

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

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

35 (2)(A) However, ~~if a passenger under sixteen (16) years of age~~  
36 ~~was in the vehicle at the time of the offense,~~ a person who pleads guilty or



1 nolo contendere to or is found guilty of violating § 5-65-103, for a first  
 2 offense, is guilty of an unclassified misdemeanor and may be imprisoned for  
 3 no ~~fewer~~ less than seven (7) days and no more than one (1) year, if at the  
 4 time of the offense:

5 (i) A passenger under sixteen (16) years of age was  
 6 in the motor vehicle;

7 (ii) The person was driving on a suspended driver's  
 8 license or was driving without having a driver's license in effect; or

9 (iii) The person causes property damage.

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

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

17 (1)(A) For no ~~fewer~~ less than seven (7) days but no more than  
 18 one (1) year for the second offense occurring within five (5) years of the  
 19 first offense or no ~~fewer~~ less than thirty (30) days of community service and  
 20 is guilty of an unclassified misdemeanor.

21 (B)(i) ~~However, if a person under sixteen (16) years of~~  
 22 ~~age was in the vehicle at the time of the offense, for~~ the penalty shall be  
 23 for no fewer less than thirty (30) days but no more than one (1) year for the  
 24 second offense occurring within five (5) years of the first offense or no  
 25 ~~fewer less than sixty (60) days of community service,~~ if at the time of the  
 26 offense:

27 (a) A passenger under sixteen (16) years of  
 28 age was in the motor vehicle;

29 (b) The person was driving on a suspended  
 30 driver's license or was driving without having a driver's license in effect;  
 31 or

32 (c) The person causes property damage.

33 (ii) If the court orders community service, the  
 34 court shall clearly set forth in written findings the reasons for the order  
 35 of community service;

36 (2)(A) For no ~~fewer~~ less than ninety (90) days but no more than

1 one (1) year for the third offense occurring within five (5) years of the  
 2 first offense or no ~~fewer~~ less than ninety (90) days of community service and  
 3 is guilty of an unclassified misdemeanor.

4 (B)(i) ~~However, if a person under sixteen (16) years of~~  
 5 ~~age was in the vehicle at the time of the offense, for the penalty shall be~~  
 6 for no fewer less than one hundred twenty days (120) days but no more than  
 7 one (1) year for the third offense occurring within five (5) years of the  
 8 first offense or no fewer less than one hundred twenty (120) days of  
 9 community service, and is guilty of an unclassified misdemeanor if at the  
 10 time of the offense:

11 (a) A passenger under sixteen (16) years of  
 12 age was in the motor vehicle;

13 (b) The person was driving on a suspended  
 14 driver's license or was driving without having a driver's license in effect;  
 15 or

16 (c) The person causes property damage.

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

20 (3)(A) For at least one (1) year but no more than six (6) years  
 21 for the fourth offense occurring within five (5) years of the first offense  
 22 or not less than one (1) year of community service and is guilty of a ~~a~~ an  
 23 unclassified felony.

24 (B)(i) ~~However, if a person under sixteen (16) years of age was~~  
 25 ~~in the vehicle at the time of the offense, the penalty is an unclassified~~  
 26 felony and shall be for at least two (2) years but no more than six (6) years  
 27 for the fourth offense occurring within five (5) years of the first offense  
 28 or not less than two (2) years of community service ~~and is guilty of a~~  
 29 felony, if at the time of the offense:

30 (a) A passenger under sixteen (16) years of  
 31 age was in the motor vehicle;

32 (b) The person was driving on a suspended  
 33 driver's license or was driving without having a driver's license in effect;  
 34 or

35 (c) The person causes property damage.

36 (ii) If the court orders community service, the

1 court shall clearly set forth in written findings the reasons for the order  
2 of community service; and

3 (4)(A)(i) Except as provided in § 5-65-122, for at least two (2)  
4 years but no more than ten (10) years for the fifth or subsequent offense  
5 occurring within five (5) years of the first offense or not less than two (2)  
6 years of community service and is guilty of an unclassified felony.

7 (ii) If the court orders community service, the  
8 court shall clearly set forth in written findings the reasons for the order  
9 of community service.

10 (B)(i) However, ~~if a person under sixteen (16) years of~~  
11 ~~age was in the vehicle at the time of the offense, the penalty is an~~  
12 unclassified felony and shall be for at least three (3) years but no more  
13 than ten (10) years for the fifth offense occurring within five (5) years of  
14 the first offense or not less than three (3) years of community service ~~and~~  
15 ~~is guilty of a felony. if at the time of the offense:~~

16 (a) A passenger under sixteen (16) years of  
17 age was in the motor vehicle;

18 (b) The person was driving on a suspended  
19 driver's license or was driving without having a driver's license in effect;  
20 or

21 (c) The person causes property damage.

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

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

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

35 ~~(e)(d)~~ A prior conviction for § 5-10-105(a)(1)(A) or ~~(B)(a)(1)(B)~~ is  
36 considered a previous offense for purposes of subsection (b) of this section.