

1 State of Arkansas *As Engrossed: S1/26/15 S2/3/15 S3/9/15*

2 90th General Assembly

A Bill

3 Regular Session, 2015

SENATE BILL 64

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5 By: Senator J. Woods

6 By: Representative D. Whitaker

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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.

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Subtitle

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

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SECTION 1. Arkansas Code § 5-65-111, as amended by Act 299 of 2015, is amended to read as follows:

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5-65-111. Sentencing – Periods of incarceration – Exception.

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(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.

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(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.

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1 (2)(A) ~~If a passenger under sixteen (16) years of age was in the~~
2 ~~motor vehicle or motorboat at the time of the offense, a~~ A person who pleads
3 guilty or nolo contendere to or is found guilty of violating § 5-65-103 is
4 upon conviction guilty of an unclassified misdemeanor and may be imprisoned
5 for not less than seven (7) days but no more than one (1) year if:

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

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

11 (iii) The person caused property damage or physical
12 injury to a person.

13 (B) ~~(B)~~ The court may order public service instead of
14 imprisonment and, if the court orders public service, the court shall include
15 the reasons for the order of public service instead of imprisonment in the
16 court's written order or judgment.

17 (b)(1) A person who pleads guilty or nolo contendere to or is found
18 guilty of violating § 5-65-103 for a second offense occurring within five (5)
19 years of the first offense is upon conviction guilty of an unclassified
20 misdemeanor and may be imprisoned for not less than:

21 (A) Seven (7) days but no more than one (1) year; or

22 (B) Thirty (30) days but no more than one (1) year if a
23 passenger under sixteen (16) years of age was in the motor vehicle or
24 motorboat at the time of the offense.

25 (2) The court may order public service instead of imprisonment
26 in the following manner and, if the court orders public service, the court
27 shall include the reasons for the order of public service instead of
28 imprisonment in its written order or judgment:

29 (A) Not less than thirty (30) days; or

30 (B) Not less than sixty (60) days if:

31 (i) a A passenger under sixteen (16) years of age
32 was in the motor vehicle or motorboat at the time of the offense;

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

36 (iii) The person caused property damage or physical

1 injury to a person.

2 (c)(1) A person who pleads guilty or nolo contendere to or is found
3 guilty of violating § 5-65-103 for a third offense occurring within five (5)
4 years of the first offense is upon conviction guilty of an unclassified
5 misdemeanor and may be imprisoned for not less than:

6 (A) Ninety (90) days but no more than one (1) year; or

7 (B) One hundred twenty (120) days but no more than one (1)
8 year if a passenger under sixteen (16) years of age was in the motor vehicle
9 or motorboat at the time of the offense.

10 (2) The court may order public service instead of imprisonment
11 in the following manner and, if the court orders public service, the court
12 shall include the reasons for the order of public service instead of
13 imprisonment in its written order or judgment:

14 (A) Not less than ninety (90) days; or

15 (B) Not less than one hundred twenty (120) days if:

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

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

21 (iii) The person caused property damage or physical
22 injury to a person.

23 (d)(1) A person who pleads guilty or nolo contendere to or is found
24 guilty of violating § 5-65-103 for a fourth offense occurring within five (5)
25 years of the first offense is upon conviction guilty of an unclassified
26 felony and may be imprisoned for not less than:

27 (A) One (1) year but no more than six (6) years; or

28 (B) Two (2) years but no more than six (6) years if:

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

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

34 (iii) The person caused property damage or physical
35 injury to a person.

36 (2) The court may order public service instead of imprisonment in

1 the following manner and, if the court orders public service, the court shall
2 include the reasons for the order of public service instead of imprisonment
3 in its written order or judgment:

4 (A) Not less than one (1) year but no more than six (6)
5 years; or

6 (B) Not less than two (2) years but no more than six (6)
7 years if a passenger under sixteen (16) years of age was in the motor vehicle
8 or motorboat at the time of the offense.

9 (e)(1) A person who pleads guilty or nolo contendere to or is found
10 guilty of violating § 5-65-103 for a fifth or subsequent offense occurring
11 within five (5) years of the first offense is upon conviction guilty of an
12 unclassified felony and may be imprisoned for no fewer than:

13 (A) Two (2) years but no more than ten (10) years; or

14 (B) Three (3) years but no more than ten (10) years if:

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

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

20 (iii) The person caused property damage or physical
21 injury to a person.

22 (2) The court may order public service instead of imprisonment
23 in the following manner and, if the court orders public service, the court
24 shall include the reasons for the order of public service instead of
25 imprisonment in its written order or judgment:

26 (A) Not less than two (2) years but no more than ten (10)
27 years; or

28 (B) Not less than three (3) years but no more than ten
29 (10) years if:

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

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

35 (iii) The person caused property damage or physical
36 injury to a person.

1 (f)(1) A person who pleads guilty or nolo contendere to or is found
2 guilty of violating § 5-65-103 for a sixth or subsequent offense occurring
3 within ten (10) years of the first offense is upon conviction guilty of a
4 Class B felony.

5 (2) The court may order public service instead of imprisonment
6 in the following manner and, if the court orders public service, the court
7 shall include the reasons for the order of public service instead of
8 imprisonment in its written order or judgment:

9 (A) Not less than two (2) years but no more than ten (10)
10 years; or

11 (B) Not less than three (3) years but no more than ten
12 (10) years if:

13 (i) a A passenger under sixteen (16) years of age
14 was in the motor vehicle or motorboat at the time of the offense;

15 (ii) The person was driving on a suspended or
16 revoked driver's license or was driving without having a driver's license in
17 effect; or

18 (iii) The person caused property damage or physical
19 injury to a person.

20 (g) A certified judgment of conviction of driving or boating while
21 intoxicated or other equivalent offense from another state or jurisdiction
22 may be used to enhance the penalties as a previous offense under this
23 section.

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

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

33 (j)(1) A prior conviction for § 5-10-105(a)(1)(A) or (B) is considered
34 a previous offense for purposes of this section.

35 (2) A prior conviction under the former § 5-76-102 is considered
36 a previous offense for purposes of this section only if the current offense

1 *is operating a motorboat on the waters of this state while intoxicated.*

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/s/J. Woods

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