

State of Arkansas
93rd General Assembly
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As Engrossed: H1/19/21
A Bill

HOUSE BILL 1062

By: Representatives L. Fite, Wardlaw

By: Senator K. Hammer

For An Act To Be Entitled

AN ACT TO INCREASE THE LOOKBACK PERIOD FOR PRIOR
CONVICTIONS OF BOATING OR DRIVING WHILE INTOXICATED
FOR THE PURPOSE OF SENTENCE ENHANCEMENT; AND FOR
OTHER PURPOSES.

Subtitle

TO INCREASE THE LOOKBACK PERIOD FOR PRIOR
CONVICTIONS OF BOATING OR DRIVING WHILE
INTOXICATED FOR THE PURPOSE OF SENTENCE
ENHANCEMENT.

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

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

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

(a)(1) 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 is guilty of an unclassified misdemeanor and may be imprisoned for not less than:

(A) Twenty-four (24) hours but no more than one (1) year;

or

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

(2) 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.

(b)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a second offense occurring within ~~five (5)~~ ten (10) years of the first offense ~~is~~ upon conviction is guilty of an unclassified misdemeanor and may be imprisoned for not less than:

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

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

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

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

(B) Not less than sixty (60) days if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(c)(1) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a third offense occurring within ~~five (5)~~ ten (10) years of the first offense ~~is~~ upon conviction is guilty of an unclassified misdemeanor and may be imprisoned for not less than:

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

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

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

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

(B) Not less than one hundred twenty (120) days if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(d) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a fourth offense occurring within ~~five (5)~~

ten (10) years of the first offense ~~is~~ upon conviction is guilty of an unclassified felony and may be imprisoned for not less than:

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

(2) Two (2) years but no more than six (6) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

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

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

(2) Three (3) years but no more than ten (10) years if a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense.

(f) A person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103 for a sixth or subsequent offense occurring ~~within ten (10)~~ twenty (20) years of the first offense ~~is~~ upon conviction is guilty of a Class B felony.

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

(h) For any arrest or offense occurring before ~~July 22, 2015, but the~~ effective date of this act that has not reached a final disposition as to judgment in court, the offense shall be decided under the law in effect at the time the offense occurred, and the defendant is subject to the penalty provisions in effect at that time and not under the provisions of this section.

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

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

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

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

/s/L. Fite

APPROVED: 3/8/21