



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB64
Sponsored by Senator J. Woods
and Representative D. Whitaker**

Subtitle TO PROVIDE FOR AN ENHANCED PENALTY FOR THE OFFENSE OF DRIVING WHILE INTOXICATED WHEN A PERSON CAUSES AN ACCIDENT OR DRIVES WITHOUT A DRIVER’S LICENSE IN EFFECT WHILE INTOXICATED.

Impact Summary¹ Undetermined.

Change from current law² Amends Arkansas Code Annotated § 5-65-111, as amended by Act 299 of 2015 (which combined the offenses of Boating While Intoxicated and Driving While Intoxicated) concerning public service and jail terms for driving while intoxicated for both misdemeanors and felonies. The proposed bill adds two new courses of conduct (i.e. driving on a suspended or revoked driver’s license or without having a driver’s license in effect, or causing property damage or physical injury to a person) for which an offender may have their sentence enhanced for committing this offense. For purposes of this impact, we have focused solely on changes made to the felony code provisions.

Amends A.C.A. § 5-65-111(d)(1)(B), concerning the enhanced penalty for a fourth offense of driving while intoxicated: The penalty for the unclassified felony shall be for at least two (2) years but no more than six (6) years imprisonment for the fourth offense occurring within five (5) years of the first offense if at the time of the offense (i) a passenger under sixteen (16) years of age was in the motor vehicle or motorboat; (ii) the person was driving on a suspended or revoked driver’s license or was driving without having a driver’s license in effect; or (iii) the person causes property damage or physical injury to a person. Under current law, the court may order public service of not less than two (2) years but no more than six (6) years of public service in lieu of imprisonment if at the time of the offense a passenger under sixteen (16) years of age was in the motor vehicle or motorboat. The proposed law does not make any changes to that provision. Prior to passage of Act 299 of 2015, the penalty for imprisonment or public service could only be enhanced if a person under sixteen (16) years of age was in the vehicle at the time of the offense.

Amends A.C.A. § 5-65-111(e)(1)(B) and (e)(2)(B), concerning the enhanced penalty for a fifth or subsequent offense of driving while intoxicated: The penalty for the unclassified felony shall be for at least three (3) years but no more than ten (10) years imprisonment for the fifth offense occurring within five (5) years of the first offense or not less than three (3) years but no more than ten (10) years of public service if at the time of the

¹ This impact assessment was prepared (03/16/2015, 4:29 p.m.) by the staff of the Arkansas Sentencing Commission pursuant to A. C. A. § 16-90-802(d)(6) with data supplied by the Arkansas Department of Correction and the Administrative Office of the Courts. A micro-simulation model may be used for bills which have the potential for significant impact on correctional resources. The following designations will be used: “minimal” = less than 10 offenders per year will be affected; “medium” = would require budgetary increases for ADC inmate costs; and “major” = would require budgetary increases for ADC inmate costs and construction costs for additional beds.

² Standard punishment ranges:

Class Y	10-40 years or life	Class C	3-10 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class B	Up to 90 days; up to \$1,000
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class C	Up to 30 days; up to \$500

offense (i) a passenger under sixteen (16) years of age was in the motor vehicle or motorboat; (ii) the person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or (iii) the person causes property damage or physical injury to a person. Prior to passage of Act 299 of 2015, the penalty for imprisonment or public service could only be enhanced if a person under sixteen (16) years of age was in the vehicle at the time of the offense.

Act 299 of 2015 repealed A.C.A. § 5-65-122, Driving while intoxicated -- Sixth or subsequent offense, and rewrote the provisions in A.C.A. § 5-65-111. This proposed bill amends A.C.A. § 5-65-111(f)(2)(B), concerning the enhanced penalty for a sixth or subsequent offense of driving while intoxicated: A person who commits a sixth or subsequent offense occurring within ten (10) years of the first offense upon conviction is guilty of a Class B felony. The court may order public service of not less than three (3) years but no more than ten (10) years if (i) a passenger under sixteen (16) years of age was in the motor vehicle or motorboat at the time of the offense; (ii) the person was driving on a suspended or revoked driver's license or was driving without having a driver's license in effect; or (iii) the person caused property damage or physical injury to a person. Prior to passage of Act 299 of 2015, the penalty for public service could only be enhanced if a person under sixteen (16) years of age was in the vehicle at the time of the offense.

Impact Information

The Arkansas State Police (ASP) reports there were 3,941 alcohol/drug related automobile crashes during calendar year 2012. Of that number, 217 crashes were fatal, 1,567 crashes involved an injury, and 2,157 crashes involved property damage. Note that ASP does not collect data on the age of passengers. Additionally, the Department of Finance and Administration does not collect data from DWI arrests on information relating to the age of passengers (16 years or younger), property damage, or physical injury, or if a driver has a suspended/revoked license.

The Arkansas Department of Correction (ADC) reports 157 inmates are currently serving a term of incarceration for committing a fourth offense of Driving While Intoxicated. ADC reports seventeen (17) inmates are currently serving a term of incarceration for committing a fifth or subsequent offense of Driving While Intoxicated. ADC reports four (4) inmates are currently serving a term of incarceration for committing a sixth or subsequent offense of Driving While Intoxicated under the former code provision, A.C.A. § 5-65-122.

The Sentencing Commission reviewed 2013 sentences for DWI 4 and DWI 5. Fourteen (14) DWI 4 convictions had sentences less than 2 years (the enhanced minimum). Four (4) DWI 5 convictions had sentences less than 3 years (the enhanced minimum). Data does not reflect whether any of the circumstances proposed by this bill (to enhance the minimum sentence) were present in these convictions. There were no sentences in 2013 for DWI 6, an offense which was created during the 2013 Legislative Session.

A.C.A. § 5-65-103. Unlawful acts.

(a) It is unlawful and punishable as provided in this chapter for any person who is intoxicated to operate or be in actual physical control of a motor vehicle.

(b) It is unlawful and punishable as provided in this chapter for any person to operate or be in actual physical control of a motor vehicle if at that time the alcohol concentration in the person's breath or blood was eight-hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204.

HISTORY: Acts 1983, No. 549, § 3; A.S.A. 1947, § 75-2503; Acts 2001, No. 561, § 2; 2013, No. 361, § 2.

A.C.A. § 5-65-111. Prison terms -- Exception.

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

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

(2) (A) However, if a passenger under sixteen (16) years of age was in the vehicle at the time of the offense, a person who pleads guilty or nolo contendere to or is found guilty of violating § 5-65-103, for a first offense, may be imprisoned for no fewer than seven (7) days and no more than one (1) year.

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

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

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

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

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

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

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

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

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

(B) (i) However, if a person under sixteen (16) years of age was in the vehicle at the time of the offense, for at least two (2) years but no more than six (6) years for the fourth offense occurring within five (5) years of the first offense or not less than two (2) years of community service and is guilty of a felony.

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

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

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

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

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

(c) For any arrest or offense occurring before July 30, 1999, but 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 any defendant is subject to the penalty provisions in effect at that time and not under the provisions of this section.

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

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

HISTORY: Acts 1983, No. 549, § 4; A.S.A. 1947, § 75-2504; Acts 1997, No. 1236, § 1; 1999, No. 1077, § 11; 2001, No. 1206, § 1; 2003, No. 1461, §§ 1, 2; 2009, No. 650, § 3; 2013, No. 1268, § 1.

A.C.A. § 5-65-122. Driving while intoxicated -- Sixth or subsequent offense.

(a) (1) A sixth or subsequent offense of violating § 5-65-103 occurring within ten (10) years of a prior offense is a Class B felony.

(2) (A) A person may be sentenced under this section to two (2) years' community service in lieu of imprisonment or fine unless a person under sixteen (16) years of age was in the vehicle at the time of the offense, for which the person may be sentenced under this section to three (3) years' community service in lieu of imprisonment or fine.

(B) If the court orders community service under subdivision (a)(2)(A) of this section, it shall clearly set forth in written findings the reasons for the order of community service.

(b) The following are considered a prior offense for purposes of subsection (a) of this section:

(1) A prior conviction for violation of a penal law of another state, federal, or foreign jurisdiction that is equivalent to § 5-65-103; or

(2) A prior conviction for violation of § 5-10-105(a)(1)(A) or (B).

HISTORY: Acts 2013, No. 1268, § 3.