

1 State of Arkansas  
2 93rd General Assembly  
3 Regular Session, 2021  
4

As Engrossed: H1/19/21

# A Bill

HOUSE BILL 1062

5 By: Representatives L. Fite, Wardlaw  
6 By: Senator K. Hammer  
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## For An Act To Be Entitled

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

16 TO INCREASE THE LOOKBACK PERIOD FOR PRIOR  
17 CONVICTIONS OF BOATING OR DRIVING WHILE  
18 INTOXICATED FOR THE PURPOSE OF SENTENCE  
19 ENHANCEMENT.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 5-65-111 is amended to read as follows:  
25 5-65-111. Sentencing – Periods of incarceration – Exception.

26 (a)(1) A person who pleads guilty or nolo contendere to or is found  
27 guilty of violating § 5-65-103, for a first offense, ~~is~~ upon conviction is  
28 guilty of an unclassified misdemeanor and may be imprisoned for not less  
29 than:

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

31 or

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

35 (2) The court may order public service instead of imprisonment  
36 and, if the court orders public service, the court shall include the reasons



1 for the order of public service instead of imprisonment in the court's  
2 written order or judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (i) It is an affirmative defense to prosecution under subdivisions  
30 (a)(1)(B), (b)(1)(B), (c)(1)(B), (d)(2), and (e)(2) of this section that the  
31 person operating or in actual physical control of the motor vehicle or  
32 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 § 5-10-  
34 105(a)(1)(B) is considered a previous offense for purposes of this section.

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

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

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*/s/L. Fite*

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**APPROVED: 3/8/21**

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