



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB81
Sponsored by Senators Hickey,
Bledsoe, Caldwell, et. al**

Subtitle COMBINING THE OFFENSES OF DRIVING WHILE INTOXICATED AND BOATING WHILE INTOXICATED; CONCERNING THE OMNIBUS DWI ACT, THE UNDERAGE DUI LAW, SUSPENSIONS OF A PERSON’S DRIVERS LICENSE, AND VEHICLE REGISTRATION.

Impact Summary.¹ Undetermined.

Change from current law.² This proposed bill combines the offense of Driving While Intoxicated (DWI) and Boating While Intoxicated (BWI), makes BWI law mirror DWI law, and repeals the current statute criminalizing BWI. Under current BWI law, codified at A.C.A. § 5-76-102, there is no conduct that rises to a felony level. The effect of combining these two statutes is that penalties for BWI will increase with each subsequent offense, which includes creating new felony level BWI. The penalties for driving while intoxicated remain the same as those currently proscribed under A.C.A. § 5-65-111. However, the penalty for a sixth offense of DWI is moved from A.C.A. § 5-65-122 to A.C.A. § 5-65-111. (See attached for various code provisions.)

The proposed bill assigns penalties from the current DWI law (A.C.A. § 5-65-111 and § 5-65-122) to BWI convictions. The bill expands the unclassified felony for fourth and fifth offense DWI and a B felony for sixth offense DWI, and applies the felonies to BWI. It further expands the look back period for BWI. Under current law, convictions for BWI in the past three years are considered. The proposed bill will allow convictions up to five years old, or ten in the case of a sixth offense, to be considered in determining penalties. Further, under the proposed bill, a charge for BWI shall not be reduced or dismissed, which mirrors the current law for DWI.

Another example of increased penalties on BWI is the merging of DWI and BWI offenses for purposes of determining how many prior offenses an offender has. For example, under current law, someone with three (3) prior DWIs would still be guilty of a misdemeanor if convicted for their first BWI. Under this proposed bill, however, the same offender with three (3) prior DWIs would be guilty of a felony if convicted for their first BWI.

¹ This impact assessment was prepared (2/10/15 1:02 PM) 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 A 6-30 years; up to \$15,000
Class B 5-20 years; up to \$15,000

Class C 3-10 years; up to \$10,000
Class D 0-6 years; up to \$10,000
Unclassified As specified in statute

Misdemeanors
Class A Up to 1 year; up to \$2,500
Class B Up to 90 days; up to \$1,000
Class C Up to 30 days; up to \$500

The proposed bill also combines the law concerning BWI and DWI in several other statutory provisions; however, those should not have an impact on correctional resources.

Impact Information

The Administrative Office of the Courts reports five (5) convictions in Circuit Court for BWI, under the current law, A.C.A. § 5-76-102. Data on district court convictions for BWI is not available. Data on offenders who have received both DWI and BWI convictions is also unavailable.

In 2013, the Arkansas Game and Fish Commission made sixty (60) arrests for BWI. While there are some counties with marine units, the Arkansas Game and Fish Commission indicated that they are the predominant source of arrests for boating while intoxicated.

Because of a lack of information on BWI convictions, the impact of the bill cannot be determined. However, an increased look-back period for previous convictions for BWI and a prohibition on reducing or dismissing charges may increase the potential impact of this bill.

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.

A.C.A 5-76-102. Unlawful acts.

(a) No person shall operate any motorboat on the waters of this state while:

(1) Intoxicated; or

(2) There is an alcohol concentration in the person's breath or blood of eight hundredths (0.08) or more based upon the definition of breath, blood, and urine concentration in § 5-65-204.

(b) (1) In the case of a motorboat or device, only if the certified law enforcement officer has probable cause to believe that the operator of the motorboat is operating while intoxicated or operating while there is an alcohol concentration of eight hundredths (0.08) in the person's breath or blood, the certified law enforcement officer may administer and may test the operator at the scene by using a portable breathtesting instrument or other approved method to determine if the operator may be operating a motorboat or device in violation of this section.

(2) The consumption of alcohol or the possession of an open container aboard a vessel does not in and of itself constitute probable cause.

(c) (1) (A) For a first offense, a person violating this section shall be punished by imprisonment in the county or municipal jail for not more than one (1) year or by a fine of not less than two hundred fifty dollars (\$ 250) nor more than one thousand dollars (\$ 1,000) or by both fine and imprisonment.

(B) In addition, the court shall order the person not to operate a motorboat for a period of ninety (90) days.

(2) (A) (i) For a second offense within a three-year period, a person violating this section shall be punished by a fine of not less than five hundred dollars (\$ 500) nor more than two thousand five hundred dollars (\$ 2,500) and by imprisonment in the county or municipal jail for not more than one (1) year.

(ii) The sentence shall include a mandatory sentence that is not subject to suspension or probation of imprisonment in the county or municipal jail for not less than forty-eight (48) consecutive hours or community service for not less than twenty (20) days.

(B) In addition, the court shall order the person not to operate a motorboat for a period of one (1) year.

(3) (A) For a third or subsequent offense within a three-year period, a person violating this section shall be punished by a fine of not less than one thousand dollars (\$ 1,000) nor more than five thousand dollars (\$ 5,000) and by imprisonment in the county or municipal jail for not less than sixty (60) days

nor more than one (1) year, to include a minimum of sixty (60) days which shall be served in the county or municipal jail and that shall not be probated or suspended.

(B) In addition, the court shall order the person not to operate a motorboat for a period of three (3) years.

(4) Any person who operates a motorboat on the waters of this state in violation of a court order issued pursuant to this section shall be imprisoned for ten (10) days.

(d) A person who has been arrested for violating this section shall not be released from jail, under bond or otherwise, until the alcohol concentration is less than eight hundredths (0.08) in the person's breath or blood and the person is no longer intoxicated.

(e) (1) In any criminal prosecution of a person charged with violating subsection (a) of this section, the amount of alcohol in the defendant's blood at the time of or within four (4) hours of the alleged offense, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, gives rise to the following:

(A) If there was at that time an alcohol concentration of four hundredths (0.04) or less in the defendant's blood, urine, breath, or other bodily substance, it is presumed that the defendant was not under the influence of intoxicating liquor; and

(B) If there was at that time an alcohol concentration in excess of four hundredths (0.04) but less than eight hundredths (0.08) in the defendant's blood, urine, breath, or other bodily substance, this fact does not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(2) The provisions of subdivision (e)(1) of this section shall not be construed as limiting the introduction of any other relevant evidence bearing upon the question of whether or not the defendant was intoxicated.

(3) (A) A record or report of a certification, rule, evidence analysis, or other document pertaining to work performed by the Office of Alcohol Testing of the Department of Health under the authority of this chapter shall be received as competent evidence as to the matters contained in the record or report in a court of this state, subject to the applicable rules of criminal procedure, when duly attested to by the Director of the Department of Health or his or her assistant, in the form of an original signature or by certification of a copy.

(B) A document described in subdivision (e)(3)(A) of this section is self-authenticating.

(f) The fact that any person charged with violating subsection (a) of this section is or has been legally entitled to use alcohol or a controlled substance does not constitute a defense against any charge of violating subsection (a) of this section.

(g) Any fine for a violation of this chapter shall be remitted to the issuing law enforcement office to be used by the law enforcement office for the administration and enforcement of this chapter.

(h) Neither reckless operation of a motorboat nor any other boating or water safety infraction is a lesser included offense under a charge in violation of this section.

HISTORY: Acts 1995, No. 518, §§ 2-4, 6, 11, 12, 14; 2001, No. 561, §§ 25-27; 2005, No. 1461, § 1; 2007, No. 827, §§ 107, 108, 109.