



*Arkansas
Sentencing
Commission*

**Impact Assessment for SB130
Sponsored by Senator Stubblefield**

Subtitle CONCERNING THE OMNIBUS DWI OR BWI ACT; CONCERNING OPERATION OF A MOTOR VEHICLE OR BOAT UNDER THE INFLUENCE OF MARIJUANA; AND ESTABLISHING A PRESUMPTIVE LEVEL OF INTOXICATION DUE TO MARIJUANA IN A PERSON’S BODILY FLUIDS

Impact Summary¹ Cannot be determined.

Change from current law² Amends several statutes in the Arkansas Code to add marijuana to various provisions regarding driving while intoxicated. This impact will focus on criminal provisions.

Amends Arkansas Code Annotated § 5-10-105 (a)(1)(B), Negligent homicide, driving while intoxicated, to add a new course of conduct. Under current law, a person commits negligent homicide if he or she negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft while intoxicated, or if at the time at the time there is an alcohol concentration of eight hundredths (0.08) or more in the person’s breath or blood. Under the proposed bill, a person commits negligent homicide if he or she negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft, if at the time there is a THC concentration of five nanograms (5 ng) or more in the person’s blood. A violation of A.C.A. § 5-10-105 (a)(1) is a Class B felony.

Amends A.C.A. § 5-13-202(a)(3), Battery in the second degree, driving while intoxicated, to add a new course of conduct. Under current law, a person commits battery in the second degree if he or she recklessly causes serious physical injury to another person while operating or in actual physical control of a motor vehicle or motorboat if at the time the offender is intoxicated or the alcohol concentration in the offender’s breath or blood is eight-hundredths (0.08) or more. Under the proposed bill, a person commits battery in the second degree if he or she recklessly causes serious physical injury to another person while operating or in actual physical control of a motor vehicle or motorboat if, at the time, the THC concentration in the person’s blood is five nanograms (5 ng) or more. Battery in the second degree is a Class D felony.

¹ This impact assessment was prepared (2/14/2017 1:49 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	Misdemeanors	
Class A	6-30 years; up to \$15,000	Class D	0-6 years; up to \$10,000	Class A	Up to 1 year; up to \$2,500
Class B	5-20 years; up to \$15,000	Unclassified	As specified in statute	Class B	Up to 90 days; up to \$1,000
				Class C	Up to 30 days; up to \$500

Amends A.C.A. § 5-65-103(a)(2), Driving or boating while intoxicated, to add a new course of conduct by which a person commits the offense of driving or boating while intoxicated. Under current law, it is unlawful to operate or be in actual physical control of a motorboat on the waters of the state or a motor vehicle while intoxicated or 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. Under the proposed bill, a person may also commit the offense of driving or boating while intoxicated if the person operates or is in actual physical control of a motorboat on the waters of the state or a motor vehicle, if at the that time, the THC concentration in the person's blood is five nanograms (5 ng) or more. The penalty for DWI is as follows:

- For a first through third or subsequent offense within five (5) years, an unclassified misdemeanor punishable by imprisonment in county jail for up to one (1) year, or community service.
- For a fourth or subsequent offense within five (5) years, an unclassified felony punishable by imprisonment in the Arkansas Department of Correction (ADC) for one (1) to six (6) years, or community service.
- For a fifth or subsequent offense within five (5) years, an unclassified felony punishable by imprisonment in ADC for two (2) to ten (10) years, or community service.
- For sixth or subsequent offense within ten (10) years, a Class B felony.

Impact Information

Because this proposed bill creates a new course of conduct by which an offender commits an offense, the impact is undetermined. The following numbers are for informational purposes only:

According to the Arkansas Department of Correction (ADC), as of January 21, 2017, there were 60 inmates serving a sentence for A.C.A. § 5-10-105, Negligent homicide, Class B felony. This proposed bill establishes an intoxication threshold for one particular drug, but the conduct of negligently causing the death of another person with a motor vehicle or motor boat while intoxicated by drugs is already negligent homicide.

According to the ADC, as of January 21, 2017, there were 29 inmates serving a sentence for A.C.A. § 5-13-202(a)(3)(b), Battery in the second degree - motor vehicle or boat, Class D felony. This proposed bill establishes an intoxication threshold for one particular drug, but the conduct of causing the injury of another person with a motor vehicle or motor boat while intoxicated by drugs is already battery in the second degree.

A.C.A. § 5-65-208 requires that a chemical test of the driver's blood, breath, or urine be administered for any accident which results in a fatality, and that the results be collected by the Arkansas State Police. The chemical test is also administered in some injury accidents. Compiled results from those tests are as follows: Out of 665 drug tests administered to drivers and analyzed by law enforcement in 2015, 69 were positive for Cannabinoids. Another 281 tested positive for an unknown drug. Another 631 drug tests were administered to drivers, but the results are still pending. Data does not identify the concentration of drugs found in the blood of the tested drivers. Additionally, some of these drivers may have been covered under the DWI/BWI law as currently written.

A.C.A. § 5-10-105. Negligent homicide.

(a) (1) A person commits negligent homicide if he or she negligently causes the death of another person, not constituting murder or manslaughter, as a result of operating a vehicle, an aircraft, or a watercraft:

(A) While intoxicated;

(B) (i) If at that time there is an alcohol concentration of eight hundredths (0.08) or more in the person's breath or blood based upon the definition of alcohol concentration in § 5-65-204, as determined by a chemical test of the person's blood, urine, breath, saliva, or other bodily substance.

(ii) The method of the chemical test of the person's blood, urine, saliva, breath, or other bodily substance shall be made in accordance with §§ 5-65-204 and 5-65-206;

(C) While passing a stopped school bus in violation of § 27-51-1004; or

(D) While fatigued.

(2) A person who violates subdivision (a)(1) of this section upon conviction is guilty of a Class B felony.

(b) (1) A person commits negligent homicide if he or she negligently causes the death of another person.

(2) A person who violates subdivision (b)(1) of this section upon conviction is guilty of a Class A misdemeanor.

(c) As used in this section:

(1) "Fatigued" means:

(A) Having been without sleep for a period of twenty-four (24) consecutive hours; or

(B) Having been without sleep for a period of twenty-four (24) consecutive hours and in the state of being asleep; and

(2) "Intoxicated" means influenced or affected by the ingestion of alcohol, a controlled substance, any intoxicant, or any combination of alcohol, a controlled substance, or an intoxicant to such a degree that the operator's reactions, motor skills, and judgment are substantially altered and the operator therefore constitutes a clear and substantial danger of physical injury or death to himself or herself or to another person.

HISTORY: Acts 1975, No. 280, § 1505; A.S.A. 1947, § 41-1505; Acts 1987, No. 538, § 1; 1999, No. 1112, § 1; 2001, No. 561, § 1; 2005, No. 1004, § 1; 2005, No. 2128, § 2; 2009, No. 650, § 1; 2013, No. 361, § 1; 2013, No. 1296, § 1.

A.C.A. § 5-13-202. Battery in the second degree.

(a) A person commits battery in the second degree if:

(1) With the purpose of causing physical injury to another person, the person causes serious physical injury to another person;

(2) With the purpose of causing physical injury to another person, the person causes physical injury to another person by means of a deadly weapon other than a firearm;

(3) The person recklessly causes serious physical injury to another person:

(A) By means of a deadly weapon; or

(B) While operating or in actual physical control of a motor vehicle or motorboat if at the time:

(i) The person is intoxicated; or

(ii) The alcohol concentration in the person's breath or blood is eight-hundredths (0.08) or more based upon the definition of alcohol concentration in § 5-65-204; or

(4) The person knowingly, without legal justification, causes physical injury to or incapacitates a person he or she knows to be:

(A) (i) A law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility while the law enforcement officer, firefighter, code enforcement officer, or employee of a correctional facility is acting in the line of duty.

(ii) As used in this subdivision (a)(4)(A):

(a) (1) "Code enforcement officer" means an individual charged with the duty of enforcing a municipal code, municipal ordinance, or municipal regulation as defined by a municipal code, municipal ordinance, or municipal regulation.

(2) "Code enforcement officer" includes a municipal animal control officer; and

(b) "Employee of a correctional facility" includes a person working under a professional services contract with the Department of Correction, the Department of Community Correction, or the Division of Youth Services of the Department of Human Services;

(B) A teacher or other school employee while acting in the course of employment;

(C) An individual sixty (60) years of age or older or twelve (12) years of age or younger;

(D) An officer or employee of the state while the officer or employee of the state is acting in the performance of his or her lawful duty;

(E) While performing medical treatment or emergency medical services or while in the course of other employment relating to his or her medical training:

(i) A physician;

(ii) A person licensed as emergency medical services personnel, as defined in § 20-13-202;

(iii) A licensed or certified health care professional; or

(iv) Any other health care provider; or

(F) An individual who is incompetent, as defined in § 5-25-101.

(b) Battery in the second degree is a Class D felony.

(c) As used in this section, "motorboat" means the same as defined in § 5-76-101 [repealed].

HISTORY: Acts 1975, No. 280, § 1602; 1981, No. 877, § 1; 1983, No. 12, § 1; A.S.A. 1947, § 41-1602; Acts 1995, No. 1173, § 1; 1995, No. 1305, § 2; 1995, No. 1338, § 1; 1997, No. 207, § 1; 1997, No. 878, § 1; 1999, No. 389, § 1; 2003, No. 66, § 1; 2007, No. 827, § 27; 2009, No. 344, § 1; 2009, No. 689, § 1; 2011, No. 1120, § 6; 2011, No. 1168, § 1; 2013, No. 429, § 1; 2015, No. 104, §§ 1, 2.

A.C.A. § 5-65-103. Driving or boating while intoxicated.

(a) (1) It is unlawful and punishable as provided in this chapter for a person who is intoxicated to operate or be in actual physical control of a motorboat on the waters of this state or a motor vehicle.

(2) It is unlawful and punishable as provided in this chapter for a person to operate or be in actual physical control of a motorboat on the waters of this state or 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.

(b) The consumption of alcohol or the possession of an open container of alcohol aboard a motorboat does not in and of itself constitute probable cause that the person committed the offense of boating while intoxicated.

(c) An alcohol-related offense under this section is a strict liability offense.

HISTORY: Acts 1983, No. 549, § 3; A.S.A. 1947, § 75-2503; Acts 2001, No. 561, § 2; 2013, No. 361, § 2; 2015, No. 299, § 6; 2015 (1st Ex. Sess.), No. 6, §§ 3, 4.

A.C.A. § 5-65-111. Sentencing -- Periods of incarceration -- Exception.

(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.

(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.

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

(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.

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

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

(B) 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.

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

(B) Not less than 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) (1) 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) years of the first offense is upon conviction guilty of an unclassified felony and may be imprisoned for no fewer than:

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

(B) 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.

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

(B) Not less than 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) (1) 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) years of the first offense is upon conviction guilty of a Class B felony.

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

(B) Not less than 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.

(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 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)(2)(A), (b)(1)(B), (c)(1)(B), (d)(1)(B), and (e)(1)(B) 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.

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; 2015, No. 299, § 6.