

ENGROSSED HOUSE
BILL NO. 1228

BY: POPE, WEESE, SULLIVAN,
ISTOOK, WORTHEN, APPLE,
GREENWOOD, COLEMAN and
GATES of the HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO PUBLIC SAFETY; AMENDING 22 O.S.
1981, SECTION 991a, AS LAST AMENDED BY SECTION 1,
CHAPTER 152, O.S.L. 1990 (22 O.S. SUPP. 1990,
SECTION 991a), WHICH RELATES TO THE SENTENCING
POWER OF THE COURTS; MODIFYING SENTENCING POWER;
AMENDING 47 O.S. 1981, SECTION 11-902, AS LAST
AMENDED BY SECTION 109, CHAPTER 51, O.S.L. 1990 (47
O.S. SUPP. 1990, SECTION 11-902), WHICH RELATES TO
PERSONS UNDER THE INFLUENCE OF ALCOHOL OR OTHER
INTOXICATING SUBSTANCES WHILE OPERATING OR BEING IN
ACTUAL PHYSICAL CONTROL OF A MOTOR VEHICLE;
RESTRICTING CERTAIN SENTENCING OPTIONS; AUTHORIZING
NIGHT OR WEEKEND INCARCERATION; AMENDING 47 O.S.
1981, SECTION 11-902.2, AS LAST AMENDED BY SECTION
66, CHAPTER 265, O.S.L. 1990 AND AS RENUMBERED BY
SECTION 77, CHAPTER 265, O.S.L. 1990 (43A O.S.
SUPP. 1990, SECTION 3-452), WHICH RELATES TO
ALCOHOL AND SUBSTANCE ABUSE COURSES; MODIFYING
SCOPE OF CERTAIN SENTENCING OPTIONS; AND PROVIDING
AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 1981, Section 991a, as last amended by Section 1, Chapter 152, O.S.L. 1990 (22 O.S. Supp. 1990, Section 991a), is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, when a defendant is convicted of a crime and no death sentence is imposed, the court shall either:

1. suspend the execution of sentence in whole or in part, with or without probation. The court, in addition, may order the convicted defendant at the time of sentencing or at any time during the suspended sentence to do one or more of the following:

- a. To provide restitution to the victim according to a schedule of payments established by the sentencing court, together with interest upon any pecuniary sum at the rate of twelve percent (12%) per annum, if the defendant agrees to pay such restitution or, in the opinion of the court, if he is able to pay such restitution without imposing manifest hardship on the defendant or his immediate family and if the extent of the damage to the victim is determinable with reasonable certainty, or
- b. To reimburse any state agency for amounts paid by the state agency for hospital and medical expenses incurred by the victim or victims, as a result of the criminal act for which such person was convicted, which reimbursement shall be made directly to the state agency, with interest accruing thereon at the rate of twelve percent (12%) per annum, or
- c. To engage in a term of community service without compensation, according to a schedule consistent with

the employment and family responsibilities of the person convicted, or

- d. To pay a reasonable sum into any trust fund, established pursuant to the provisions of Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes, and which provides restitution payments by convicted defendants to victims of crimes committed within the State of Oklahoma wherein such victim has incurred a financial loss, or
- e. To confinement in the county jail for a period not to exceed six (6) months, or
- f. To reimburse the court fund for amounts paid to court-appointed attorneys for representing the defendant in the case in which he is being sentenced.

However, any such order for restitution, community service or confinement in the county jail, or a combination thereof, shall be made in conjunction with probation and shall be made a condition of the suspended sentence; or

2. impose a fine prescribed by law for the offense, with or without probation or commitment and with or without restitution or service as provided for in this section;

3. commit such person for confinement provided for by law with or without restitution as provided for in this section;

4. in the case of nonviolent felony offenses, sentence such person to the Community Service Sentencing Program created pursuant to Section 991a-4 of this title; or

5. in addition to the other sentencing powers of the court, in the case of a person convicted of a first or second offense of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance, or a combination of alcohol or another intoxicating substance, or convicted pursuant to Section 761 of Title 47 of the Oklahoma

Statutes of operating a motor vehicle while the ability of the person to operate such vehicle was impaired due to the consumption of alcohol, require such person:

- a. To participate in an alcohol and drug substance abuse course, pursuant to Sections ~~11-902.2~~ 3-452 and ~~11-902.3~~ 3-453 of Title 47 43A of the Oklahoma Statutes,
- b. To attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee,
- c. To both participate in the alcohol and drug substance abuse course, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph.

B. When sentencing a person convicted of a crime, the court shall first consider a program of restitution for the victim, as well as imposition of a fine or incarceration of the offender. The provisions of paragraph 1 of subsection A of this section shall not apply to defendants being sentenced upon their third or subsequent to their third conviction of a felony or defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes.

C. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime is released by the court subject to conditions imposed by the court and subject to the supervision of the Department of Corrections. Such supervision shall be initiated upon an order of probation from the court, and shall not exceed two (2) years. However, such

supervision may be extended for a period not to exceed the expiration of the maximum term or terms of the sentence upon a determination by the Division of Probation and Parole of the Department of Corrections that the best interests of the public and the releasee will be served by an extended period of supervision.

D. The Department of Corrections, or such other agency as the court may designate, shall be responsible for the monitoring and administration of the restitution and service programs provided for by subparagraphs a, c, and d of paragraph 1 of subsection A of this section, and shall ensure that restitution payments are forwarded to the victim and that service assignments are properly performed.

E. 1. The Division of Probation and Parole of the Department of Corrections is hereby authorized, subject to funds available through appropriation by the Legislature, to contract with counties for the administration of county Community Service Sentencing Programs.

2. Any offender eligible to participate in the Program pursuant to this act shall be eligible to participate in a county Program; provided, participation in county-funded Programs shall not be limited to offenders who would otherwise be sentenced to confinement with the Department of Corrections.

3. The Division shall establish criteria and specifications for contracts with counties for such Programs. A county may apply to the Division for a contract for a county-funded Program for a specific period of time. The Department shall be responsible for ensuring that any contracting county complies in full with specifications and requirements of the contract. The contract shall set appropriate compensation to the county for services to the Division.

4. The Division is hereby authorized to provide technical assistance to any county in establishing a Program, regardless of whether the county enters into a contract pursuant to this

subsection. Technical assistance shall include appropriate staffing, development of community resources, sponsorship, supervision and any other requirements set forth in this act.

5. The Department shall annually make a report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House on the number of such Programs, the number of participating offenders, the success rates of each Program according to criteria established by the Department and the costs of each Program.

SECTION 2. AMENDATORY 47 O.S. 1981, Section 11-902, as last amended by Section 109, Chapter 51, O.S.L. 1990 (47 O.S. Supp. 1990, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in subsection C of this section for any person to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has a blood or breath alcohol concentration, as defined in Section 756 of this title, of ten-hundredths (0.10) or more at the time of a test of such person's blood or breath administered within two (2) hours after the arrest of such person;

2. Is under the influence of alcohol;

3. Is under the influence of any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle; or

4. Is under the combined influence of alcohol and any other intoxicating substance to a degree which renders such person incapable of safely driving or operating a motor vehicle.

B. The fact that any person charged with a violation of this section is or has been lawfully entitled to use alcohol or a controlled dangerous substance or any other intoxicating substance shall not constitute a defense against any charge of violating this section.

As used in this title, the term "other intoxicating substance" shall mean any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, and any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions.

C. Every person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year, and a fine of not more than One Thousand Dollars (\$1,000.00). Any person who within ten (10) years after a previous conviction of a violation of this section is convicted of a second or subsequent offense pursuant to the provisions of this section or has a prior conviction after October 31, 1984, and within ten (10) years prior to the conviction pursuant to the provisions of this section, in a municipal criminal court of record for the violation of a municipal ordinance prohibiting the offense provided for in subsection A of this section shall be deemed guilty of a felony and shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years, and a fine of not more than Two Thousand Five Hundred Dollars (\$2,500.00). The court may sentence a person convicted of a first or second violation of this section to night or weekend incarceration pursuant to Section 991a-2 of Title 22 of the Oklahoma Statutes. A third or subsequent conviction for a violation of the provisions of this section shall not be subject to statutory provisions for suspended sentences, deferred sentences, or probation, provided however, the court may sentence a person convicted of a third or subsequent violation of this section to night or weekend incarceration pursuant

to Section 991a-2 of Title 22 of the Oklahoma Statutes for not less than two (2) years. When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the person shall be assigned to the Department of Mental Health and Substance Abuse Services for substance abuse treatment. The inmate shall be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate was assigned to the Department of Mental Health and Substance Abuse Services, if at the time the sentence of incarceration was imposed, the court determined that the convicted person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the convicted person shall pay. While assigned to such a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the person shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment. If the person is evaluated not to be receptive to treatment or is evaluated to be a security risk, the inmate shall be assigned to a state correctional facility according to normal Department of Corrections classification procedures. In the event a felony conviction does

not result in a sentence of incarceration as provided for in this subsection, the person shall be required to serve not less than ten (10) days of community service, or to undergo in-patient rehabilitation or treatment in a public or private facility with at least minimum security for a period of not less than forty-eight (48) consecutive hours, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes.

D. The Department of Mental Health and Substance Abuse Services and the Department of Corrections may certify to the Department of Public Safety that a person has successfully completed a treatment program provided for in subsection C of this section and is successfully complying with any follow-up treatment required by the Department of Corrections. In such case, the person shall be given credit therefor as fulfillment of all provisions of Section ~~11-902.3~~ 3-453 of Title 43A of the Oklahoma Statutes and shall be permitted to apply for reinstatement of any suspension, revocation, cancellation or denial order withdrawing his privilege to drive. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked license when the applicant meets the statutory requirements which affect his existing driving privilege.

E. Any person who is found guilty of a violation of the provisions of this section may be referred, prior to sentencing, to an alcoholism evaluation facility designated by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the facility for the evaluation in an amount not to exceed Seventy-five Dollars (\$75.00). The facility shall, within seventy-two (72) hours, submit a written report to the court for the purpose of assisting the court in its final sentencing determination.

F. Any person who is found guilty of a violation of the provisions of this section may be required by the court to attend a victims impact panel program sponsored by the Highway Safety Division of the Oklahoma Department of Transportation, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not to exceed Five Dollars (\$5.00), to the program to offset the cost of participation by the defendant, if in the opinion of the court the defendant has the ability to pay such fee.

SECTION 3. AMENDATORY 47 O.S. 1981, Section 11-902.2, as last amended by Section 66, Chapter 265, O.S.L. 1990 and as renumbered by Section 77, Chapter 265, O.S.L. 1990 (43A O.S. Supp. 1990, Section 3-452), is amended to read as follows:

Section 3-452. ~~In~~ Except as otherwise provided by law, in any case in a municipal or district court of proper jurisdiction wherein the defendant is charged with actual physical control of or operation of a motor vehicle while under the influence of or impaired by alcohol or a drug, the court may:

A. Upon a plea of guilty or nolo contendere, or stipulation by the defendant, or a verdict, but before a judgment of guilt is entered, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings upon the condition that the defendant enroll in, attend and successfully complete, at his own expense, an alcohol and drug substance abuse course or an alcohol and drug substance abuse treatment program as provided by Section ~~67~~ 3-453 of this ~~act~~ title; or

B. Upon a conviction, suspend the execution of sentence, with or without probation, upon the condition that the defendant enroll in, attend and successfully complete, at his own expense, an alcohol and drug substance abuse course or an alcohol and drug substance abuse treatment program as provided by Section ~~67~~ 3-453 of this ~~act~~ title.

SECTION 4. This act shall become effective January 1, 1993.

Passed the House of Representatives the 5th day of March, 1991.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1991.

President of the Senate