

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1019

BY: HOLT

AS INTRODUCED

AN ACT RELATING TO CRIMES AND PUNISHMENTS; AMENDING 21 O.S. 1981, SECTIONS 444, 540A AND 1319, WHICH RELATE TO AVOIDING ARREST; MODIFYING PENALTIES; AMENDING 47 O.S. 1981, SECTION 6-205, AS LAST AMENDED BY SECTION 1, CHAPTER 286, O.S.L. 1990 (47 O.S. SUPP. 1990, SECTION 6-205), WHICH RELATES TO MANDATORY REVOCATION OF DRIVERS LICENSE; MODIFYING REASONS FOR MANDATORY REVOCATION; PROVIDING FOR FORFEITURE OF MOTOR VEHICLES IN CERTAIN CIRCUMSTANCES; PROVIDING PROCEDURES THEREFOR; PROVIDING FOR DISTRIBUTION OF CERTAIN MONIES; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 21 O.S. 1981, Section 444, is amended to read as follows:

Section 444. A. It is unlawful for any person, after being lawfully arrested or detained by a peace officer, to escape or attempt to escape from such peace officer.

B. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a misdemeanor offense shall be guilty of a ~~misdemeanor~~ felony.

C. Such person who escapes or attempts to escape after being lawfully arrested or detained for custody for a felony offense shall be guilty of a felony.

D. Any person convicted of violating this section shall be punished by imprisonment for not less than one (1) year and a fine of not more than Two Thousand Dollars (\$2,000.00). A conviction for a violation of this section shall not be subject to statutory provisions for suspended sentences, deferred judgments, or probation.

SECTION 2. AMENDATORY 21 O.S. 1981, Section 540A, is amended to read as follows:

Section 540A. Any operator of a motor vehicle who has received a visual and audible signal, a red light and a siren from a peace officer driving a motor vehicle showing the same to be an official police, sheriff, highway patrol or state game ranger vehicle directing the said operator to bring his vehicle to a stop and who willfully increases his speed or extinguishes his lights in an attempt to elude such peace officer, or willfully attempts in any other manner to elude the peace officer, or who does elude such peace officer, is guilty of a ~~misdemeanor~~ felony and upon conviction shall be punished by imprisonment for not less than one (1) year and a fine of not more than Two Thousand Dollars (\$2,000.00). The peace officer, while attempting to stop a violator of this section, may communicate a request for the assistance of other peace officers from any office, department or agency. Any peace officer within this state having knowledge of such request is authorized to render such assistance in stopping the violator and may effect an arrest under this section upon probable cause. ~~Violation of this section shall constitute a misdemeanor and shall be punishable by not more~~

~~than one (1) year imprisonment in the county jail or by a fine of not more than Two Thousand Dollars (\$2,000.00) or by both such fine and imprisonment. A conviction for a violation of this section shall not be subject to statutory provisions for suspended sentences, deferred judgments, or probation.~~

SECTION 3. AMENDATORY 21 O.S. 1981, Section 1319, is amended to read as follows:

Section 1319. Every person who resists, or enters into a combination with any other person to resist the execution of any legal process, under circumstances not amounting to a riot, ~~is punishable by imprisonment in a county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$1,000.00), or both~~ upon conviction shall be guilty of a felony and shall be punished by imprisonment for not less than one (1) year and a fine of not more than Two Thousand Dollars (\$2,000.00). A conviction for a violation of this section shall not be subject to statutory provisions for suspended sentences, deferred judgments, or probation.

SECTION 4. AMENDATORY 47 O.S. 1981, Section 6-205, as last amended by Section 1, Chapter 286, O.S.L. 1990 (47 O.S. Supp. 1990, Section 6-205), is amended to read as follows:

Section 6-205. A. The Department of Public Safety shall forthwith revoke the driver's license or driving privilege of any person upon receiving a record of conviction in any court of any of the following offenses, when such conviction has become final:

1. Manslaughter or negligent homicide resulting from the operation of a motor vehicle;
2. Driving or being in actual physical control of a motor vehicle while under the influence of alcohol or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance provided however, the Department shall not additionally revoke such license pursuant to this subsection if

the person's driving privilege has been revoked because of a test result or test refusal pursuant to an implied consent law arising from the same circumstances which resulted in the conviction;

3. Any felony during the commission of which a motor vehicle is used;

4. Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

5. Perjury or the making of a false affidavit or statement under oath to the Department under the Uniform Vehicle Code, Section 1-101 et seq. of this title, or under any other law relating to the ownership or operation of motor vehicles;

6. A felony conviction for unlawfully possessing, distributing, dispensing, manufacturing or trafficking in a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act; or

7. A misdemeanor conviction for unlawfully possessing a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act while in actual physical control of a motor vehicle; or

8. A conviction for escaping or attempting to escape from arrest or detention, eluding or attempting to elude a peace officer while operating a motor vehicle, or resisting the execution of legal process.

B. The first license revocation under any provision of this section except for paragraphs 2 and 7 of subsection A of this section shall be for a period of one (1) year. Such period shall not be modified.

C. A license revocation under any provision of this section except for paragraph 2 of subsection A of this section shall be for a period of three (3) years if a prior revocation under this section, except under paragraph 2 of subsection A of this section

commenced within the preceding five-year period as shown by the Department's record. Such period shall not be modified.

D. The period of license revocation under paragraph 2 of subsection A of this section shall be governed by the provisions of Section 6-205.1 of this title.

E. The license revocation under paragraph 7 of subsection A of this section shall be for a period of thirty (30) days. Such period shall not be modified.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 540C of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Any commissioned peace officer of this state is authorized to seize any motor vehicle operated by a person in violation of Section 540A of Title 21 of the Oklahoma Statutes. Said property may be held as evidence until a forfeiture has been declared or a release ordered.

B. Notice of seizure and intended forfeiture proceeding shall be filed in the office of the clerk of the district court for the county wherein such property is seized and shall be given all owners and parties in interest.

C. Notice shall be given according to one of the following methods:

1. Upon each owner or party in interest whose right, title, or interest is of record in the Tax Commission or with the county clerk for filings under the Uniform Commercial Code, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes;

2. Upon each owner or party in interest whose name and address is known, served in the manner of service of process in civil cases prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

3. Upon all other owners, whose addresses are unknown, but who are believed to have an interest in the property by one publication

in a newspaper of general circulation in the county where the seizure was made.

D. Within sixty (60) days after the mailing or publication of the notice, the owner of the property and any other party in interest or claimant may file a verified answer and claim to the property described in the notice of seizure and of the intended forfeiture proceeding.

E. If at the end of sixty (60) days after the notice has been mailed or published there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use and may order the property forfeited to the state, if such fact is proven.

F. If a verified answer is filed, the forfeiture proceeding shall be set for hearing.

G. At the hearing the state shall prove by clear and convincing evidence that property was used in the attempt or commission of an act specified in subsection A of this section with knowledge by the owner of the property.

H. The claimant of any right, title, or interest in the property may prove his lien, mortgage, or conditional sales contract to be bona fide and that his right, title, or interest was created without any knowledge or reason to believe that the property was being, or was to be, used for the purpose charged.

I. In the event of such proof, the court may order the property released to the bona fide or innocent owner, lien holder, mortgagee, or vendor if the amount due him is equal to, or in excess of, the value of the property as of the date of the seizure, it being the intention of this section to forfeit only the right, title, or interest of the purchaser.

J. If the amount due to such person is less than the value of the property, or if no bona fide claim is established, the property shall be forfeited to the state and shall be sold pursuant to

judgment of the court, as on sale upon execution, except as otherwise provided for by law.

K. Property taken or detained pursuant to this section shall not be repleviable, but shall be deemed to be in the custody of the office of the district attorney of the county wherein the property was seized. The district attorney shall release said property to the owner of the property if it is determined that the owner had no knowledge of the illegal use of the property or if there is insufficient evidence to sustain the burden of showing illegal use of such property. If the owner of the property stipulates to the forfeiture and waives the hearing, the district attorney may determine if the value of the property is equal to or less than the outstanding lien. If such lien exceeds the value of the property, the property may be released to the lien holder. Property which has not been released by the district attorney shall be subject to the orders and decrees of the court or the official having jurisdiction thereof.

L. The district attorney shall not be held civilly liable for having custody of the seized property or proceeding with a forfeiture action as provided for in this section.

M. Attorney fees shall not be assessed against the state or the district attorney for any actions or proceeding pursuant to this act.

N. The proceeds of the sale of any property shall be distributed as follows, in the order indicated:

1. To the bona fide or innocent purchaser, conditional sales vendor, or mortgagee of the property, if any, up to the amount of his interest in the property, when the court declaring the forfeiture orders a distribution to such person;

2. To the payment of the actual reasonable expenses of preserving the property;

3. The balance to the revolving fund for the county wherein the property was seized, established pursuant to Section 1738 of Title 21 of the Oklahoma Statutes, to be distributed as follows: one-third (1/3) to the office of the arresting authorities; one-third (1/3) of said fund to be used and maintained as a revolving fund by the district attorney for the victim-witness fund, a reward fund or the evidence fund; and one-third (1/3) to go to the jail maintenance fund, with a yearly accounting to the board of county commissioners in whose county the fund is established. Monies from said fund may be used to pay costs for the storage of such property if such property is ordered released to a bona fide or innocent owner, lien holder, mortgagee, or vendor and if such funds are available in said fund.

O. If the court finds that the property was not used in the attempt or commission of an act specified in subsection A of this section, the court shall order the property released to the owner as his right, title, or interest appears on record in the Tax Commission as of the seizure.

P. No vehicle used by a person as a common carrier in the transaction of business as a common carrier shall be forfeited pursuant to the provisions of this section unless it shall be proven that the owner or other person in charge of such conveyance was a consenting party or privy to the attempt or commission of an act specified in subsection A of this section. No property shall be forfeited pursuant to the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the knowledge or consent of such owner, and by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any state.

SECTION 6. This act shall become effective September 1, 1991.

43-1-5020

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