

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)
2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1141

By: Dickerson and Leftwich of
the Senate

and

Steidley and Perry of the
House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure and motor vehicles; amending 22 O.S. 1991, Section 996.1, and 47 O.S. 1991, Section 11-902, as last amended by Section 13, Chapter 276, O.S.L. 1993 (47 O.S. Supp. 1993, Section 11-902), which relate to Delayed Sentencing Program for Young Adults, persons under the influence of alcohol or other intoxicating substance; modifying definition of offender to include using vehicle to facilitate intentional discharge of certain firearms; requiring certain persons to participate in alcohol and drug substance abuse evaluation programs; modifying who may conduct programs; modifying procedure for establishing reimbursement fees; specifying locations for alcohol and drug substance abuse evaluations; prohibiting certain solicitations or referrals; providing for confidential reports; clarifying scope of court authority; enhancing penalties for second and subsequent felony offenses of operation of motor vehicle while under influence of alcohol or other intoxicating substance; defining terms; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 996.1, is amended to read as follows:

Section 996.1 As used in the Delayed Sentencing Program for Young Adults:

"Offender" means any adult eighteen (18) through twenty-one (21) years of age or a juvenile who has been certified to stand trial as an adult, who has committed a felony offense, who has not previously been convicted of two or more felonies, and who has not

been convicted of assault and battery with a dangerous weapon, aggravated assault and battery on a law officer, poisoning with intent to kill, shooting with intent to kill, assault with intent to kill, using a vehicle to facilitate the intentional discharge of any kind of firearm in violation of Section 652 of Title 21 of the Oklahoma Statutes, assault with intent to commit a felony, murder in the first degree, murder in the second degree, manslaughter in the first degree, manslaughter in the second degree, kidnapping, burglary in the first degree, kidnapping for extortion, maiming, robbery, child beating, wiring any equipment, vehicle, or structure with explosives, forcible sodomy, rape in the first degree or rape by instrumentation, lewd or indecent proposition or lewd or indecent act with a child under sixteen (16) years of age, use of a firearm or offensive weapon to commit or attempt to commit a felony, pointing firearms, rioting, or arson in the first degree.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 13, Chapter 276, O.S.L. 1993 (47 O.S. Supp. 1993, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful and punishable as provided in 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, 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 and within ten (10) years of such municipal conviction is convicted under the provision 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). Any person who is convicted of a second felony offense under the provisions of this section shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed seven (7) years and a fine of not more than Five Thousand Dollars (\$5,000.00). Any person who is convicted of a third or subsequent felony offense under the provisions of this section shall be sentenced to the custody of the Department of Corrections for not less than one (1) year and not to exceed (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00).

D. When a person is sentenced to the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center. The Department of Corrections shall classify and assign the person to one or more of the following:

1. The Department of Mental Health and Substance Abuse Services pursuant to paragraph 1 of subsection A of Section ~~13~~ 612 of ~~this act~~ Title 57 of the Oklahoma Statutes;

2. The Electronic Monitoring Program pursuant to Section ~~5~~ 510.9 of ~~this act~~ Title 57 of the Oklahoma Statutes with participation in a substance abuse treatment program and follow-up treatment;

3. A correctional facility operated by the Department of Corrections; or

4. Other alternative to incarceration authorized by law.

E. In the event a felony conviction does not result in the person being sentenced to the custody of the Department of Corrections, the person shall be required to serve not less than ten (10) days of community service, or to undergo inpatient 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.

F. 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 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 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.

G. 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.

H. Any person who is found guilty of a violation of the provisions of this section ~~may~~ shall be ~~referred~~ ordered to participate in, prior to sentencing, ~~to an alcoholism~~ alcohol and drug substance abuse evaluation program offered by a facility designated or qualified practitioner certified 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 or qualified practitioner for the evaluation ~~in an amount~~. The Department of Mental Health and Substance Abuse Services shall establish a fee schedule, based upon a person's ability to pay, provided the fee for an evaluation shall not ~~to~~ exceed Seventy-five Dollars (\$75.00). The evaluation shall be conducted at a certified facility, the office of a qualified practitioner or at another location as ordered by the court. The facility or qualified practitioner shall, within seventy-two (72) hours from the time the person is assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. No person, agency or facility operating an alcohol and drug substance abuse evaluation program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated pursuant to this section for any treatment program or alcohol and drug substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or alcohol and drug substance abuse service offered by such person, agency or facility. If a person is sentenced to the custody of the Department of Corrections and the court has received a written evaluation report pursuant to this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation report submitted to the court pursuant to this subsection shall be handled in a manner which will keep

such report confidential from the general public's review.
Nothing contained in this subsection shall be construed to
prohibit the court from ordering judgment and sentence in the
event the defendant fails or refuses to comply with an order of
the court to obtain the evaluation required by this subsection.
As used in this subsection, "qualified practitioner" means a
person with at least a bachelor's degree in substance abuse
treatment, mental health or a related health care field and at
least two (2) years' experience in providing alcohol treatment,
other drug abuse treatment, or both alcohol and other drug abuse
treatment who is certified each year by the Department of Mental
Health and Substance Abuse Services to provide these assessments.
However, any person who does not meet the requirements for a
qualified practitioner as defined herein, but who has been
previously certified by the Department of Mental Health and
Substance Abuse Services to provide alcohol or drug treatment or
assessments, shall be considered a qualified practitioner provided
all education, experience and certification requirements stated
herein are met within two (2) years from the effective date of
this act.

I. 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, if such a program is offered in the county where the judgment is rendered, and to pay a fee, not less than Five Dollars (\$5.00) nor more than Fifteen Dollars (\$15.00) as set by the governing authority of the program and approved by the court, 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. This act shall become effective September 1, 1994.

44-2-2729

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