

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1028

By: Pope

AS INTRODUCED

An Act relating to public safety; amending 47 O.S. 1991, Section 11-902, as amended by Section 7, Chapter 382, O.S.L. 1992 (47 O.S. Supp. 1992, Section 11-902), which relates to persons operating motor vehicles while under the influence of alcohol or other intoxicating substances; clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 11-902, as amended by Section 7, Chapter 382, O.S.L. 1992 (47 O.S. Supp. 1992, 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 the county 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).

D. When a sentence of incarceration is imposed, the person shall be processed through the Lexington Assessment and Reception Center. The Department of Corrections shall:

1. Assign the person to the Department of Mental Health and Substance Abuse Services pursuant to subsection E of this section;

2. Place the person under electronically monitored home detention and, if appropriate, require completion of a substance abuse treatment plan, pursuant to subsection F of this section; or

3. Place the person in an institution operated by the Department of Corrections.

E. 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 may 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. Any order by the court requiring such reimbursement, if willfully disobeyed, may be enforced as an indirect contempt of court. While assigned to 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.

F. If the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk, the Department may place the person on electronically monitored home detention and, if deemed appropriate by the Department, require the person to complete a substance abuse treatment plan selected by the Department as a condition of Preparole Conditional Supervision, when approved by the Pardon and Parole Board. As used in this subsection, "substance abuse treatment plan" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services to provide substance abuse treatment and "electronically monitored home detention" means incarceration of the person within a specified location or locations with monitoring by means of a device approved by the Department of Corrections that detects if the person leaves the confines of any specified location. The inmate shall be required to pay the Department of Corrections for all or part of the monitoring fee and pay the entity providing the substance abuse treatment plan for all or part of the cost of the plan, if at the time the sentence of incarceration is imposed the court determines that the convicted person has the ability to pay for all or part of the monitoring fee and, if appropriate, treatment plan. The monitoring fee shall not exceed Seventy-five

Dollars (\$75.00) a month. The court shall determine the amount of the monitoring fee and treatment plan costs the convicted person shall pay. Any order by the court for the payment of the monitoring fee or treatment plan costs, if willfully disobeyed, may be enforced as an indirect contempt of court. 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. Any violation of the electronically monitored home detention or the treatment plan or any other condition of Preparole Conditional Supervision may result in the inmate's reassignment to a correctional facility of the Department of Corrections.

G. 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.

H. 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 E 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 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.

I. 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.

J. 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.

K. 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 2. This act shall become effective September 1, 1993.

44-1-5506

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