

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 127

By: Littlefield of the  
Senate

and

Hutchison of the House

An Act relating to motor vehicles; amending 47 O.S.

1991, Section 11-902 \* \* \* which relates to driving  
under the influence of alcohol; \* \* \*

repealing 47 O.S. 1991, Sections 11-902, as last

amended by Section 3, Chapter 308, O.S.L. 1994 and

11-902, as last amended by Section 5, Chapter 387,

O.S.L. 1994 \* \* \* providing an effective date; and

declaring an emergency.

AUTHORS: Add the following House Coauthors: Beutler, Hager and  
Wells

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill  
and insert

"An Act relating to motor vehicles; amending 22 O.S. 1991,  
Section 991a, as last amended by Section 1, Chapter 308,  
O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), which  
relates to sentencing powers; modifying procedures and  
requirements for use of ignition interlock devices;  
amending 47 O.S. 1991, Section 10-104, as last amended by  
Section 12 of Enrolled House Bill No. 1830 of the 1st  
Session of the 45th Oklahoma Legislature, which relates to  
duty to give information and render aid at accidents;  
modifying circumstances by which a driver is required to  
submit to drug and alcohol testing; amending 47 O.S. 1991,  
Section 11-902, as last amended by Section 17 of Enrolled  
House Bill No. 1012 of the 1st Session of the 45th  
Oklahoma Legislature, which relates to driving under the  
influence of alcohol; adding certain convictions for  
purposes of enhanced penalty under certain circumstances;  
providing exception; amending 47 O.S. 1991, Section 751,  
as amended by Section 6, Chapter 387, O.S.L. 1994 (47 O.S.  
Supp. 1994, Section 751), which relates to implied consent

for certain tests; specifying procedure for the arrest of certain persons; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 22 O.S. 1991, Section 991a, as last amended by Section 1, Chapter 308, O.S.L. 1994 (22 O.S. Supp. 1994, Section 991a), is amended to read as follows:

Section 991a. A. Except as otherwise provided in the Elderly and Incapacitated Victims Protection Program, Section 991a-5 et seq. of this title, 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,
- 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,

- 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,
- 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,
- e. to confinement in the county jail for a period not to exceed six (6) months,
- 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, or
- g. to repay the reward or part of the reward paid by a certified local crimestoppers program and the Oklahoma Reward System. In determining whether the defendant shall repay the reward or part of the reward, the court shall consider the ability of the defendant to make the payment, the financial hardship on the defendant to make the required payment, and the importance of the information to the prosecution of the defendant as provided by the arresting officer or the district attorney with due regard for the confidentiality of the records of the certified local crimestoppers program and the Oklahoma Reward System. The court shall assess this repayment against the defendant as a cost of prosecution. "Certified local

crimestoppers program" means a crimestoppers program certified by the Office of the Attorney General pursuant to Section 991g of this title. The "Oklahoma General Reward System" means the reward program established by Section 150.18 of Title 74 of the Oklahoma Statutes.

However, any such order for restitution, community service, payment to a certified local crimestoppers program, payment to the Oklahoma Reward System, 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;

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, Section 991a-4 of this title or Section 227 of Title 57 of the Oklahoma Statutes;

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;

5. In addition to ~~the~~ other sentencing powers ~~of,~~ the court may, in the case of a person convicted of operating or being in control of a motor vehicle while the person was under the influence of alcohol, other intoxicating substance~~r~~, or a combination of alcohol or another intoxicating substance, or convicted 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 or treatment program, pursuant to Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes,

- b. 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,
- c. to both participate in the alcohol and drug substance abuse course or treatment program, pursuant to subparagraph a of this paragraph and attend a victims impact panel program, pursuant to subparagraph b of this paragraph, or
- d. ~~to install an ignition interlock device, at the person's own expense, approved by the Department of Public Safety, upon every motor vehicle operated by such person and to require that a notation of this restriction be affixed to the person's driver's license at the time of reinstatement of the license. Said restriction shall remain on the driver's license for such period as the court shall determine. The restriction may be modified or removed by order of the court and notice of said order shall be given to the Department of Public Safety. Upon the expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order. Failure to comply with the order to install an ignition interlock device or operating any vehicle without such device during the period of restriction shall be a violation of the sentence and~~

~~may be punished as deemed proper by the sentencing court, or~~

~~e.~~ beginning January 1, 1993, to submit to electronically monitored home detention administered and supervised by the Department of Corrections, and to pay to the Department a monitoring fee, not to exceed Seventy-five Dollars (\$75.00) a month, to the Department of Corrections, if in the opinion of the court the defendant has the ability to pay such fee. Any fees collected pursuant to this subparagraph shall be deposited in the Department of Corrections Revolving Fund. Any order by the court for the payment of the monitoring fee, if willfully disobeyed, may be enforced as an indirect contempt of court;

6. a. In addition to the other sentencing powers of the court, in the case of a person convicted 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 other intoxicating substances, or in the case of a person convicted of operating a motor vehicle while the ability of the person to operate a motor vehicle was impaired due to the consumption of alcohol or other intoxicating substance or a combination of alcohol or other intoxicating substances, the court shall:

(1) restrict any person who is granted probation to operate only a motor vehicle equipped with an ignition interlock device, approved by the Department of Public Safety, during the period of probation,

(2) stipulate on the record the requirement for, the date by which the installation is to be completed, and the period of the use of an ignition interlock device,

(3) order that an ignition interlock device be installed upon every motor vehicle operated by the person, at the person's own expense,

(4) provide a list of approved vendors and their locations to the person,

(5) immediately notify the Department of Public Safety, and

(6) require that a notation of this restriction be affixed to the person's driver license at the time of reinstatement of the license.

b. (1) Failure of the person to have the device installed on or before the date by which the installation of the ignition interlock device was to be completed or show cause why the order was not complied with shall, unless excused, constitute sufficient basis for a finding by the court that the person has failed to comply with the terms of probation.

(2) Cause for failure to comply means any reason the court finds sufficiently justifiable to excuse the person's failure to comply with the court's order.

c. If the use of an ignition interlock device is required under this section and a person has the device installed on or before the date indicated on the court record, the manufacturer or dealer installing the device shall:

- (1) submit to the monitor, a copy of the installation order issued by the court that indicates the date on which the installation of the device was completed,
  - (2) provide, to the person, a form stipulating the terms and conditions of the ignition interlock program, and
  - (3) provide a certificate to the person, embossed with the manufacturer or dealer's seal, that certifies the date on which the installation of the device was completed.
- d. (1) Upon presentation of the certificate by a person, the Department of Public Safety shall issue that person a driver license indicating that person is restricted to only operate a motor vehicle equipped with an ignition interlock device.
- (2) Upon expiration of the period for the restriction, the Department of Public Safety shall remove the restriction without further court order.
- e. (1) Any person required to install an ignition interlock device shall have the device monitored by the manufacturer or dealer of the device for proper use and accuracy at least every sixty-seven (67) days.
- (2) A report of the monitoring and the person's compliance or noncompliance with the terms and conditions of the ignition interlock program shall be issued by the manufacturer or dealer to the monitor within ten (10) days following each monitoring.

- f. (1) If an ignition interlock device is ordered installed, the person shall pay the reasonable cost of leasing, installing and maintaining the device.
- (2) A person may not be excluded from this section for inability to pay the costs, unless:
- (a) the person files a pauper's affidavit, and
- (b) the court enters a finding that the person is indigent.
- (3) In lieu of waiver of the entire amount of the cost, the court may, when appropriate, waive up to, but not to exceed, fifty percent (50%) of the reasonable cost of leasing, installing and maintaining the device, and shall direct the person to make payments accordingly.
- g. (1) An additional fee of Seventy-five Dollars (\$75.00) shall be paid to the court in advance by each person ordered to lease, install and maintain an ignition interlock device pursuant to this subsection.
- (2) There is hereby created in the State Treasury of Oklahoma the "Ignition Interlock Fund". All fees collected by the court under the provisions of this act shall be promptly deposited into this Fund. All funds to the credit of this Fund are hereby appropriated for use as provided in this act and shall not be expended except as provided in this act.
- (3) Each manufacturer or dealer installing and maintaining the ignition interlock device provided to a person whom the court has entered a finding of indigency and waived a portion of the

lease, installation and monitoring of the device shall be entitled to a reimbursement from the Fund.

(4) Reimbursements shall equal, but not exceed, the amount of the lease, installation and monitoring waived under this subsection.

(5) Failure to pay the fees required under subparagraph g of this paragraph shall constitute sufficient basis for a finding by the court that the probationer has failed to comply with the terms of the probation.

h. (1) If a person is required in the course and scope of employment to operate a farm tractor or implement of husbandry owned by the person's employer, the person may operate that farm tractor or implement of husbandry in the course and scope of employment without installation of an ignition interlock device.

(2) (a) To the extent that an employer-owned motor vehicle is made available to a person subject to this section, no exemption under this section shall apply.

(b) A person intending to operate an employer-owned motor vehicle who is restricted to the operation of a motor vehicle equipped with an ignition interlock device shall notify the employer and obtain consent in writing from the employer to install a device in the employer-owned motor vehicle.

i. Upon conviction for violation of this section, the court shall:

- (1) notify the manufacturer or dealer maintaining the ignition interlock device of the violation and cause the manufacturer or dealer maintaining the ignition interlock device to terminate the person from the ignition interlock program, and
  - (2) notify the Department of Public Safety to immediately revoke the person's driver license for the remainder of the period of probation.
- j. (1) It is a misdemeanor for a person to:
  - (a) attempt to circumvent, bypass or tamper with the installation or operation of an ignition interlock device or the ignition interlock device itself,
  - (b) circumvent, bypass or tamper with the installation or operation of an ignition interlock device or the ignition interlock device itself,
  - (c) knowingly furnish a motor vehicle without an ignition interlock device to someone who is not authorized to drive a motor vehicle unless the motor vehicle is equipped with an ignition interlock device,
  - (d) rent, lease, or borrow a motor vehicle without an ignition interlock device if a driving restriction is imposed under this section,
  - (e) request another person to blow into an ignition interlock device, if the person is required to have a device and the person requests or solicits another to blow into the device to start the motor vehicle in order to circumvent the device,

- (f) blow into an ignition interlock device or start a motor vehicle equipped with an ignition interlock device for the purpose of providing an operable motor vehicle to another person required to have the device,
- (g) advertise for sale, offer for sale, sell, or lease an ignition interlock device unless the device has been certified by the Department of Public Safety and the manufacturer of the device has affixed a warning label as approved by the Department of Public Safety on the device, stating, in effect, that any individual tampering, circumventing, or misusing the device shall be subject to prosecution and/or civil liability,
- (h) fail to return the ignition interlock device to the manufacturer or dealer immediately upon program completion or termination, and
- (i) advertise for sale, offer for sale, sell, buy, lease or knowingly conceal an ignition interlock device subject to the provisions of subparagraph h of this paragraph.
- (2) This subparagraph does not apply if the starting of a motor vehicle, or the request to start a motor vehicle, equipped with an ignition interlock device is done for the purpose of mechanical repair of the device or the motor vehicle and the person subject to the court order does not drive the motor vehicle;

7. In addition to the other sentencing powers of the court, in the case of a person convicted of prostitution pursuant to Section

1029 of Title 21 of the Oklahoma Statutes, require such person to receive counseling for the behavior which may have caused such person to engage in prostitution activities. Such person may be required to receive counseling in areas including but not limited to alcohol and substance abuse, sexual behavior problems, or domestic abuse or child abuse problems;

~~7.~~ 8. In addition to the other sentencing powers of the court, in the case of a person convicted of any crime related to domestic abuse, as defined in Section 60.1 of this title, the court may require the defendant to undergo the treatment or participate in the counseling services necessary to bring about the cessation of domestic abuse against the victim. The defendant may be required to pay all or part of the cost of the treatment or counseling services; or

~~8.~~ 9. In addition to the other sentencing powers of the court, the court, in the case of a sex offender, shall require the person to participate in a treatment program designed specifically for the treatment of sex offenders, if available. The treatment program must be approved by the probation officer who has supervisory authority over the defendant if the defendant is placed on probation, or the court if the court retains supervisory authority over the defendant. Such treatment shall be at the expense of the defendant based on the defendant's ability to pay.

Provided, for the purposes of this section, the term "sex offense" shall not include a violation of paragraph 1 of subsection A of Section 1021 of Title 21 of the Oklahoma Statutes.

B. Notwithstanding any other provision of law, any person who is found guilty of a violation of any provision of Section 761 or 11-902 of Title 47 of the Oklahoma Statutes or any person pleading guilty or nolo contendere for a violation of any provision of such sections shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a

facility 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. 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 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 subsection 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.

C. 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, beginning January 1, 1993, to defendants being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, except as otherwise provided in this subsection. In the case of a person being sentenced for their second or subsequent felony conviction for violation of Section 11-902 of Title 47 of the Oklahoma Statutes, the court may sentence the person pursuant to the provisions of paragraph 1 of subsection A of this section if the court orders the person to submit to electronically monitored home detention administered and supervised by the

Department of Corrections pursuant to subparagraph e of paragraph 5 of subsection A of this section.

D. When sentencing a person convicted of a crime, the judge shall consider any victim impact statements if submitted to the jury, or the judge in the event a jury is waived.

E. Probation, for purposes of subsection A of this section, is a procedure by which a defendant found guilty of a crime, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, 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, except as otherwise provided by law. In the case of a person convicted of a sex offense, supervision shall not be limited to two (2) years. Provided further any supervision provided for in this section 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.

F. 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.

G. 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.

H. As used in this section:

1. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater; and

2. "Electronically monitored home detention" means incarceration of the defendant 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.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 10-104, as last amended by Section 12 of Enrolled House Bill No. 1830 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 10-104. A. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his correct name, address and registration number of the vehicle he is driving, and shall upon request exhibit his driver license and his security verification form, as defined in Section 7-600 of this title, to the person struck or the driver or occupant of or person attending any vehicle collided with, and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary or if such carrying is requested by the injured person. Any driver who provides information required by this section which is intentionally inaccurate shall be subject to the provisions of Section 10-103 of this title.

B. Any driver of any vehicle involved in an accident who ~~is~~ could be cited for any traffic offense where said accident resulted in the immediate death of any person shall submit to drug and alcohol testing as soon as practicable after such accident occurs. The traffic offense violation shall constitute probable cause for purposes of Section 752 of this title and the procedures found in Section 752 of this title shall be followed to determine the presence of alcohol or controlled dangerous substances within the driver's blood system.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 17 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, 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 or a violation under the provisions of any law of another state prohibiting the offense provided in subsection A of this section is convicted of a second 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).

A conviction from another state shall not be used to enhance punishment to the provisions of this subsection if that conviction is based on a blood or breath alcohol concentration of less than ten-hundredths (0.10).

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 612 of Title 57 of the Oklahoma Statutes;

2. The Electronic Monitoring Program pursuant to Section 510.9 of 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 shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation program offered by a facility 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. 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 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 June 7, 1994. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence and any other sanction authorized by law for failure or refusal to comply with an order of the court.

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 4. AMENDATORY 47 O.S. 1991, Section 751, as amended by Section 6, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1994, Section 751), is amended to read as follows:

Section 751. A. Any person who operates a motor vehicle upon the public roads, highways, streets, turnpikes or other public place within this state shall be deemed to have given consent to a test or tests of such person's blood or breath, for the purpose of determining the alcohol concentration as defined in Section 756 of this title, and such person's blood, saliva or urine for determining the presence and concentration of any other intoxicating substance therein as defined in this section, if arrested for any offense arising out of acts alleged to have been committed while the person was operating or in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place while under the influence of alcohol or other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance or in violation of Section ~~40~~ 762 of this ~~act~~ title. The test shall be administered by or at the direction of a law enforcement officer after having arrested such person and having reasonable grounds to believe that such person was operating or in actual physical control of a motor vehicle within this state while under the influence of alcohol or any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance or that the person being under eighteen (18) years of age has consumed alcohol or other intoxicating substance, or the combination of alcohol and other intoxicating substance in violation of Section ~~40~~ 762 of this ~~act~~ title.

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 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.

B. The law enforcement agency by which the arresting officer is employed may designate, in accordance with the rules and regulations of the Board of Tests for Alcohol and Drug Influence, hereinafter referred to as the Board, whether blood or breath is to be tested for the alcohol concentration thereof, and whether blood, saliva or urine is to be tested for the presence and concentration of any other intoxicating substance therein. In the event the law enforcement agency does not designate the test to be administered, breath shall be the substance tested for alcohol concentration. Blood may also be tested to determine the alcohol concentration thereof in the event that breath cannot be tested to determine the alcohol concentration thereof because of the lack of an approved device or qualified person to administer a breath test or because such breath test for any other reason cannot be administered in accordance with the rules and regulations of the Board. In the event the law enforcement agency does not designate the test to be administered, blood, saliva or urine shall be the substance tested for the presence and concentration of any other intoxicating substance or the combination of alcohol and any other intoxicating substance therein.

C. In the event the person is incapable of submitting to and successfully completing, by reason of illness or injury or other physical disability, the test to be administered, an alternate test may be administered in accordance with the rules and regulations of the Board.

D. Any person who is unconscious or otherwise incapable of refusing to submit to a test of such person's blood or breath to

determine the alcohol concentration thereof, or to a test of such person's blood, saliva or urine to determine the presence and concentration of any other intoxicating substance therein, shall be deemed not to have withdrawn the consent provided by subsection A of this section, and such test may be administered as provided herein.

An unconscious person who has been issued a citation by a law enforcement officer for one of the offenses listed in subsection A of this section is arrested for purposes of this section. The arresting officer must leave a copy of the citation with the arrested person which may be accomplished by handing it to the arrested person, or by leaving it with the personal effects of the arrested party, so as to inform the unconscious person of the arrest. Any person who has been arrested for one of the offenses listed in subsection A of this section who is unconscious or injured and who requires immediate medical treatment as determined by a treating physician may be released on his own recognizance for medical reasons by the arresting officer. The arresting officer who releases an arrested person on his own recognizance must indicate that he has done so on the face of the citation. Any person released on their own recognizance for medical reasons shall remain at liberty pending the filing of charges.

E. In addition to any test designated by the arresting officer, the arrested person may also designate any additional test to be administered to determine the concentration of alcohol, any other intoxicating substance or the combination of alcohol and any other intoxicating substance. The cost of such additional test shall be at the expense of the arrested person.

A sufficient quantity of any specimen obtained at the designation of the arrested person shall be available to the law enforcement agency employing the arresting officer. Such specimens shall be treated in accordance with the same rules and regulations applicable to the specimens obtained by an arresting officer.

SECTION 5. This act shall become effective July 1, 1995.

SECTION 6. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval."

Passed the House of Representatives the 10th day of April, 1995.

Speaker of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1995.

President of the Senate