

ENROLLED SENATE
BILL NO. 1230

By: Brown and Cole of the
Senate

and

Boyd (Laura), Roberts,
Cotner and Adair of the
House

An Act relating to driving under the influence;
making it unlawful for persons under twenty-one
years of age to operate vehicle under influence of
alcohol or drugs; providing penalty; defining term;
construing provisions; amending Sections 1 and 3,
Chapter 320, O.S.L. 1995, 47 O.S. 1991, Sections 6-
107.1, as last amended by Section 1, Chapter 387,
O.S.L. 1994, 6-205, as last amended by Section 1,
Chapter 313, O.S.L. 1995, 6-205.1, as last amended
by Section 4, Chapter 243, O.S.L. 1994, 754, as
last amended by Section 5, Chapter 313, O.S.L.
1995, 754.1, as last amended by Section 6, Chapter
313, O.S.L. 1995, 755, as last amended by Section
7, Chapter 313, O.S.L. 1995, and 756, as last
amended by Section 8, Chapter 313, O.S.L. 1995 (47
O.S. Supp. 1995, Sections 6-106.1, 6-106.3, 6-
107.1, 6-205, 6-205.1, 754, 754.1, 755 and 756),
which relate to the Drunk Driving Prevention Act,
revocation of driving privileges, mandatory
revocation, periods of revocation, seizure of
drivers license, modification of revocation,
appeal, and admissibility of evidence; modifying
statutory references; modifying language; directing
State Department of Education to develop certain
programs; providing for certain court-ordered

revocation; providing alternative periods of
revocation; including certain violation under
mandatory revocation of driver license; including
certain offense under authority to seize and revoke
license; requiring certain procedures be included
in certain hearing; modifying gender references;
defining evidence which is admissible for certain
offense; providing for codification; and providing
an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-106.4 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful, and punishable as provided in subsection C of this section, for any person under twenty-one (21) years of age to drive, operate, or be in actual physical control of a motor vehicle within this state who:

1. Has any measurable quantity of alcohol in the person's blood or breath at the time of a test administered within two (2) hours after an arrest of the person;

2. Exhibits evidence of being under the influence of any other intoxicating substance as shown by analysis of a specimen of the person's blood, breath, saliva, or urine in accordance with the provisions of Sections 752 and 759 of Title 47 of the Oklahoma Statutes; or

3. Exhibits evidence of the combined influence of alcohol and any other intoxicating substance.

B. As used in this section, the term "other intoxicating substance" means 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, or 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 function.

C. 1. Any person under twenty-one (21) years of age who violates any provision of this section shall, upon conviction, be guilty of driving under the influence while under age. A violator shall be punished for a first offense by a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or by completion of twenty (20) hours of community service, or by requiring the person to attend and complete a treatment program, or by any combination of fine, community service, or treatment.

2. Any violator, upon a second or subsequent conviction, shall be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by completion of forty (40) hours of community service, or by requiring the person to

attend and complete a treatment program, or by any combination of fine, community service, or treatment.

3. The court may assess additional community service hours in lieu of any fine specified in this section.

4. In addition to any penalty imposed pursuant to the provisions of this section, the person may be subject to:

- a. the cancellation or denial of driving privileges as ordered by the court pursuant to Section 6-107.1 of Title 47 of the Oklahoma Statutes,
- b. the seizure of the drivers license at the time of arrest or detention, and the administrative revocation of driving privileges by the Department of Public Safety pursuant to Section 754 of Title 47 of the Oklahoma Statutes, and
- c. the mandatory revocation of driving privileges pursuant to Section 6-205.1 of Title 47 of the Oklahoma Statutes, which revocation period may be modified as provided by law.

D. Nothing in this section shall be construed to prohibit the filing of charges pursuant to Section 761 or 11-902 of Title 47 of the Oklahoma Statutes when the facts warrant.

SECTION 2. AMENDATORY Section 1, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1995, Section 6-106.1), is amended to read as follows:

Section 6-106.1 Sections 6-106.1 through 6-106.3 of this title and Section 1 of this act shall be known and may be cited as the "Drunk Driving Prevention Act".

SECTION 3. AMENDATORY Section 3, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1995, Section 6-106.3), is amended to read as follows:

Section 6-106.3 A. The State Department of Education shall, within one (1) year after the effective date of this act, develop and administer appropriate driver education programs to be conducted in all of the schools of this state to increase awareness of the dangers of drinking and driving.

B. 1. In order to provide education and instruction to all applicants for an original Oklahoma driver license, the Oklahoma Driver's Manual, published and distributed by the Department of Public Safety pursuant to Section 2-114 of this title, shall contain accurate information on:

- a. the hazards of driving while under the influence of alcohol or other intoxicating substances, and
- b. the legal and financial consequences resulting from violations of this state's laws prohibiting the operation of a motor vehicle while under the influence of alcohol or other intoxicating substances.

2. In addition to the subjects set forth in Section 6-110 of this title, the written examination administered by the Department of Public Safety to every applicant for an original Oklahoma driver license shall contain questions on the subjects listed in this subsection.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 6-107.1, as last amended by Section 1, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1995, Section 6-107.1), is amended to read as follows:

Section 6-107.1 A. When any district court, municipal court of record or any municipal court in a city or town in which the judge is an attorney licensed to practice law in this state has determined that a person under the age of eighteen (18) years has committed any offense described in subsection C of this section, or that a person eighteen (18), nineteen (19), or twenty (20) years of age has committed an offense described in Section 1 of this act, the court shall notify the Department of Public Safety on a form prescribed by the Department as provided in Section 6-107.2 of this title.

B. The notice shall include the name, date of birth, physical description and, if known, the driver license number of the person. The notice shall contain a recommendation to the Department to cancel or deny driving privileges for a specified period of time, in the discretion of the court, except as otherwise provided by law, as follows:

1. For a period not to exceed six (6) months;
2. For a period not to exceed one (1) year; or
3. For a period not to exceed two (2) years; or
4. Until the person attains twenty-one (21) years of age.

The court shall send a copy of the notice to the person first class, postage prepaid.

C. In addition to the administrative revocation of driving privileges pursuant to Section 754 of this title, and the mandatory revocation of driving privileges pursuant to Section 6-205.1 of this title, this section applies to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, or consumption of beer, alcohol, or any beverage containing alcohol and to any crime, violation, infraction, traffic offense or other offense involving or relating to the possession, use, sale, purchase, transportation, distribution, manufacture, trafficking, cultivation, consumption, ingestion, inhalation, injection, or absorption of any controlled dangerous substance as defined by paragraph 8 of Section 2-101 of Title 63 of the Oklahoma Statutes or any substance 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.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 6-205, as last amended by Section 1, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 6-205), is amended to read as follows:

Section 6-205. A. The Department of Public Safety shall immediately revoke the driver license or driving privilege of any person, whether adult or juvenile, upon receiving a record of conviction in any municipal, state or federal court within the United States 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, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, or any violation of Section 1 of this act; provided, however, the Department shall not additionally revoke a license pursuant to this subsection if the person's driving privilege has been revoked because of a test result or test refusal pursuant to Section 753 or 754 of this title 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; or
6. A misdemeanor or felony conviction for unlawfully possessing, distributing, dispensing, manufacturing or trafficking in a controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes.

B. The first license revocation under any provision of this section, except for paragraph 2 or 6 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 or 6 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 or 6 of subsection A of this section shall be governed by the provisions of Section 6-205.1 of this title.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 6-205.1, as last amended by Section 4, Chapter 243, O.S.L. 1994 (47 O.S. Supp. 1995, Section 6-205.1), is amended to read as follows:

Section 6-205.1 A. The driver license or driving privilege of a person who is convicted of any offense as provided in paragraph 2 or 6 of subsection A of Section 6-205 of this title, or a person who has refused to submit to a test or tests as provided in Section 753 of this title, or a person whose alcohol concentration is subject to the provisions of Section 754 of this title, shall be revoked or denied by the Department of Public Safety for the following period, as applicable:

1. The first license revocation pursuant to Section 753 of this title shall be for one hundred eighty (180) days, which may be modified;

2. The first license revocation pursuant to paragraph 2 of subsection A of Section 6-205 of this title or pursuant to Section 754 of this title shall be for one hundred eighty (180) days, which may be modified;

3. The first license revocation pursuant to paragraph 6 of subsection A of Section 6-205 of this title shall be for one hundred eighty (180) days, which may be modified; provided, for license revocations for a misdemeanor charge of possessing a controlled dangerous substance, the provisions of this paragraph shall apply to any such revocations by the Department on or after January 1, 1993;

4. A revocation pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title shall be for a period of one (1) year if within five (5) years preceding the date of arrest relating thereto, a prior revocation commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title as shown by the Department's records. Such period may be modified; or

5. A revocation pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title shall be for a period of three (3) years if within five (5) years preceding the date of arrest relating thereto, two or more prior revocations commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205, 753 or 754 of this title as shown by the Department's records. Such period may be modified.

B. The term "revocation" as used in this section includes a denial by the Department to issue a driver's license.

C. Each period of license revocation not subject to modification shall be mandatory and neither the Department nor any court shall grant a license or permit to drive a motor vehicle based upon hardship or otherwise for the duration of that period. The revocation periods provided for in this section may be modified as provided for in Section 754.1 or 755 of this title.

D. Any appeal of a revocation or denial of a driver license shall be governed by Section 6-211 of this title.

SECTION 7. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 5, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 754), is amended to read as follows:

Section 754. A. Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older whose alcohol concentration is ten-hundredths (0.10) or more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to submit to a breath or blood test for alcohol concentration, shall immediately surrender his or her license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any license, permit, or other evidence of driving privilege surrendered by the arrested person or found on the arrested person during a search.

B. If the license, permit, or other evidence of driving privilege seized by the officer has not expired and otherwise appears valid to the officer, the officer shall issue to the arrested person a dated receipt for that license, permit, or other evidence of driving privilege on a form prescribed by the Department. This receipt shall be recognized as a license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and constitute a notice of revocation of driving privilege by the Department of Public Safety effective in thirty (30) days. The seized license, permit, or other evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the arresting officer and shall be submitted by mail or in person to the Commissioner of Public Safety or a designated representative within seventy-two (72) hours of the issuance of the receipt. The failure of the arresting officer to timely file this report shall not affect the authority of the Department to revoke the driving privilege of the arrested person.

C. Upon receipt of a written blood or breath test report reflecting that the arrested person had any measurable quantity of alcohol in the person's blood or breath, if the person is under twenty-one (21) years of age, or, if the arrested person is twenty-one (21) years of age or older, an alcohol concentration of ten-hundredths (0.10) or more, accompanied by a sworn report from a law enforcement officer that the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol as prohibited by law, the Commissioner of Public Safety shall revoke the privilege to drive of the arrested person and any nonresident operating privilege for a period as provided by Section 6-205.1 of this title. Revocation of the license of the arrested person shall become effective thirty (30) days after the arrested person is given written notice thereof by the arresting officer as hereinbefore provided or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose privilege to drive has been revoked or denied, the Commissioner of Public Safety shall grant the person an opportunity to be heard if the request is received by the Department within fifteen (15) days after the notice of the revocation is given in accordance with this section or Section 2-116 of this title. The request shall also operate to stay the revocation or denial by the Department until the disposition of the hearing unless the person is under suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing. If the hearing request is not timely filed, the revocation shall be sustained.

E. The hearing shall be before the Commissioner of Public Safety or an authorized agent, in the troop headquarters of the Oklahoma Highway Patrol nearest the county wherein the alleged

events occurred for which the person was arrested, unless the Commissioner of Public Safety or an authorized agent directs the hearing be held in some other county; or, the Commissioner or an authorized agent may schedule the hearing by telephone and conduct the hearing by telephone conference call. The hearing may be recorded and its scope shall cover the issues of whether the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance as prohibited by law, and whether the person was placed under arrest.

1. If the revocation or denial is based upon a breath or blood test result and a sworn report from a law enforcement officer, the scope of the hearing shall also cover the issues as to whether:

- a. the testing procedures used were in accordance with existent rules of the Board of Tests for Alcohol and Drug Influence,
- b. the person was not denied a timely requested breath or blood test,
- c. the breath or blood specimen was obtained from the person within two (2) hours of the actual stop by the officer,
- d. the person, if under twenty-one (21) years of age, was advised that the privilege to drive would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,
- e. the person was informed that a separate testing of the sample taken by the breathalyzer can be analyzed by the person at his or her own expense within sixty (60) days of the test date,
- f. the person, if twenty-one (21) years of age or older, was advised that the privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more, and
- g. the test result in fact reflects such alcohol concentration;

2. If the revocation or denial is based upon the refusal of the person to submit to a breath or blood test, reflected in a sworn report by a law enforcement officer, the scope of the hearing shall also include whether:

- a. the person refused to submit to the test or tests, and
- b. the person was informed that the privilege to drive would be revoked or denied if the person refused to submit to the test or tests.

F. After the hearing, the Commissioner of Public Safety or an authorized agent shall order the revocation or denial rescinded or sustained.

SECTION 8. AMENDATORY 47 O.S. 1991, Section 754.1, as last amended by Section 6, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 754.1), is amended to read as follows:

Section 754.1 A. The Department of Public Safety, prior to an administrative hearing for a revocation or denial arising under the provisions of Sections 751 through 754 of this title or under the provisions of Section 6-205.1 of this title, may modify the revocation or denial in cases of extreme and unusual hardship when it is determined by the Department that no other adequate means of transportation exists for the person whose license has been revoked or denied to allow driving in any or all of the following situations, subject to the limitations of Section 6-205.1 of this title:

1. To and from a place of employment;
2. To and from a child care facility, providing the person is a parent or legal guardian with no other means of transporting the child so the parent or legal guardian can maintain employment or attend classes;
3. To and from a medical facility;
4. In the course of employment;
5. To and from an educational institution for the purpose of attending classes if the person is enrolled and regularly attending classes at such institution;
6. To attend a course for drinking drivers, when required by the court; or
7. To permit the person to comply with any existing court order.

B. As a prerequisite and condition of any modification, the person shall be required to have installed an ignition interlock device approved by the Department, at the person's own expense, upon every motor vehicle operated by such person, except the Department shall not require the device to be installed upon a vehicle owned or leased by an employer of the person without the employer's permission. The person shall comply with all provisions of law regarding ignition interlock devices.

C. Any modification order shall state the specific times and circumstances under which driving is permitted and, if an ignition interlock device is a condition of the modification, shall state that the person is required to comply with all provisions of law regarding ignition interlock devices.

D. Upon the issuance of a modification order pursuant to this section or Section 755 of this title, the person shall pay a modification fee of One Hundred Fifty Dollars (\$150.00) to the Department. For each modification fee collected pursuant to the provisions of this section, One Hundred Dollars (\$100.00) shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury and Fifty Dollars (\$50.00) shall be remitted to the State Treasurer to be credited to the Department of Public Safety Revolving Fund. All monies accruing to the credit of the Department of Public Safety Revolving Fund from modification fees shall be budgeted and expended solely for the purpose of administering the provisions of this section and Section 755 of this title.

SECTION 9. AMENDATORY 47 O.S. 1991, Section 755, as last amended by Section 7, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 755), is amended to read as follows:

Section 755. A. If the revocation or denial is sustained, the person whose license or permit to drive or nonresident operating privilege has been revoked or denied may file a petition for appeal in the district court in the manner and subject to the proceedings provided for in Section 6-211 of this title. The district court may modify the revocation or denial in cases of extreme and unusual hardship when it is determined by the court that the person whose license or permit to drive has been revoked or denied has no other adequate means of transportation and may enter a written order directing the Department of Public Safety to allow driving in any or all of the following situations, subject to the limitations of Section 6-205.1 of this title:

1. To and from a place of employment;
2. To and from a child care facility, providing the person is a parent or legal guardian with no other means of transporting the child so the parent or legal guardian can maintain employment or attend classes;
3. To and from a medical facility;
4. In the course of employment;

5. To and from an educational institution for the purpose of attending classes if the person is enrolled and regularly attending classes at such institution;

6. To attend a course for drinking drivers, when required by the court; or

7. To permit the person to comply with any existing court order filed of record prior to the filing of a petition for appeal.

B. Any such modification order shall state the specific times and circumstances under which driving is permitted.

C. The modification order may require, as a prerequisite and condition of the modification for any first revocation, that the person shall be required to have installed an ignition interlock device approved by the Department, at the person's own expense, upon every motor vehicle operated by such person. The court shall not order the device to be installed upon a vehicle owned or leased by an employer of the person without the employer's permission. The person shall comply with all provisions of law regarding ignition interlock devices. For any second or subsequent revocation, the court shall require, as a prerequisite and condition of the modification, that the person be required to have installed an ignition interlock device upon every motor vehicle operated by such person.

SECTION 10. AMENDATORY 47 O.S. 1991, Section 756, as last amended by Section 8, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1995, Section 756), is amended to read as follows:

Section 756. A. Upon the trial of any criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or 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, evidence of the alcohol concentration in the blood or breath of the person as shown by analysis of the blood or breath of the person performed in accordance with the provisions of Sections 752 and 759 of this title or evidence of the presence and concentration of any other intoxicating substance as shown by analysis of such person's blood, breath, saliva, or urine specimens in accordance with the provisions of Sections 752 and 759 of this title is admissible. Evidence that the person has refused to submit to either of said analyses is also admissible. For the purpose of this title, when the person is under the age of twenty-one (21) years, evidence that there was, at the time of the test, any measurable quantity of alcohol is prima facie evidence that the person is under the influence of alcohol in violation of Section 1 of this act. For persons twenty-one years of age or older:

1. Evidence that there was, at the time of the test, an alcohol concentration of five-hundredths (0.05) or less is prima facie evidence that the person was not under the influence of alcohol;

2. Evidence that there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than ten-hundredths (0.10) is relevant evidence that the person's ability to operate a motor vehicle was impaired by alcohol. However, no person shall be convicted of the offense of operating or being in actual physical control of a motor vehicle while such person's ability to operate such vehicle was impaired by alcohol solely because there was, at the time of the test, an alcohol concentration in excess of five-hundredths (0.05) but less than ten-hundredths (0.10) in the blood or breath of the person in the absence of additional evidence that such person's ability to operate such vehicle was affected by alcohol to the extent that the public health and safety was threatened or that said person had violated a state statute or local ordinance in the operation of a motor vehicle; and

3. Evidence that there was, at the time of the test, an alcohol concentration of ten-hundredths (0.10) or more shall be admitted as

prima facie evidence that the person was under the influence of alcohol.

B. For purposes of this title, "alcohol concentration" means grams of alcohol per one hundred (100) milliliters of blood if the blood was tested, or grams of alcohol per two hundred ten (210) liters of breath if the breath was tested.

C. To be admissible in a proceeding, the evidence must first be qualified by establishing that the test was administered to the person within two (2) hours after the arrest of the person.

SECTION 11. This act shall become effective November 1, 1996.