

ENROLLED SENATE
BILL NO. 127

By: Littlefield of the Senate
and

Hutchison, Beutler, Hager
and Wells of the House

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 6-205, as last amended by Section 16 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, and 10-104, as last amended by Section 12 of Enrolled House Bill No. 1830 of the 1st Session of the 45th Oklahoma Legislature, which relate to revocation of license and duty to give information and render aid at accidents; modifying requirements for revocation of driver license; 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, Sections 751, as amended by Section 6, Chapter 387, O.S.L. 1994, 754, as last amended by Section 7, Chapter 387, O.S.L. 1994, 754.1, as amended by Section 3, Chapter 314, O.S.L. 1993, 755, as amended by Section 4, Chapter 314, O.S.L. 1993, and 756, as amended by Section 8, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1994, Sections 751, 754, 754.1, 755 and 756), which relate to implied

consent for certain tests, hearing after revocation, hardship modification, appeal and admission of evidence; specifying procedure for the arrest and release of certain persons; imposing condition for modification; increasing fee; making additional disposition of certain fees; deleting language relating to degree of intoxication; amending 22 O.S. 1991, Section 1115.1, as amended by Section 4 of Enrolled Senate Bill No. 119 of the 1st Session of the 45th Oklahoma Legislature, which relates to personal recognizance; providing exception; repealing Section 10, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1994, Section 762), which relates to person under eighteen years of age operating vehicle in certain circumstances; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 6-205, as last amended by Section 16 of Enrolled House Bill No. 1012 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 6-205. A. The Department of Public Safety shall forthwith 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 or any other intoxicating substance or the combined influence of alcohol and any other intoxicating substance; provided, however, the Department shall not additionally revoke such license pursuant to this subsection if the person's driving privilege has been revoked because of a test result or test refusal pursuant to Sections 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 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 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 intoxicating substance other than alcohol which may render 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 which may render 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 pursuant to 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 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 pursuant to 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 pursuant to 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 pursuant to 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 ten (10) years and a fine of not more than Five Thousand Dollars (\$5,000.00).

Provided, however, a conviction from another state shall not be used to enhance punishment pursuant 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 a 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 the 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 the provisions of 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 the provisions of 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. 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.

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. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 7, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1994, Section 754), is amended to read as follows:

Section 754. A. Any arrested person 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 license, permit or other evidence of driving privilege to the arresting law

enforcement officer. This officer shall seize any such 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, he 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 his 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 an alcohol concentration of ten-hundredths (0.10) or more accompanied by a sworn report from a law enforcement officer that he 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, 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 provided 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. Such a 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 his 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 his authorized agent directs the hearing be held in some other county; or, the Commissioner or his 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, 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 advised that his privilege to drive would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more,
- c. the test result in fact reflects such alcohol concentration, and
- d. the breath or blood specimen was obtained from the person within two (2) hours of his arrest;

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 his 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 his authorized agent shall order the revocation or denial rescinded or sustained.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 754.1, as amended by Section 3, Chapter 314, O.S.L. 1993 (47 O.S. Supp. 1994, 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 such 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. The person shall comply with all provisions of law regarding ignition interlock devices.

C. Such modification order shall state the specific times and circumstances under which driving is permitted and 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 7. AMENDATORY 47 O.S. 1991, Section 755, as amended by Section 4, Chapter 314, O.S.L. 1993 (47 O.S. Supp. 1994, 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 provided in Section 6-211 of this title, and the proceedings upon said appeal shall be the proceedings prescribed by 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 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 and shall stipulate as a prerequisite and condition of the modification 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 person shall comply with all provisions of law regarding ignition interlock devices.

SECTION 8. AMENDATORY 47 O.S. 1991, Section 756, as amended by Section 8, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1994, Section 756), is amended to read as follows:

Section 756. 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:

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;

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;

4. Alcohol concentration shall mean 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; and

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

SECTION 9. AMENDATORY 22 O.S. 1991, Section 1115.1, as amended by Section 4 of Enrolled Senate Bill No. 119 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 1115.1 A. In addition to other provisions of law for posting bail, any person, whether a resident of this state or a nonresident, who is arrested by a law enforcement officer solely for a misdemeanor violation of a state traffic law or municipal traffic ordinance, shall be released by the arresting officer upon personal recognizance if:

1. The arrested person has been issued a valid license to operate a motor vehicle by this state, another state jurisdiction within the United States, which is a participant in the Nonresident Violator Compact or any party jurisdiction of the Nonresident Violator Compact;

2. The arresting officer is satisfied as to the identity of the arrested person;

3. The arrested person signs a written promise to appear as provided for on the citation, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician; and

4. The violation does not constitute:

a. a felony, or

b. negligent homicide, or

c. driving or being in actual physical control of a motor vehicle while impaired or under the influence of

alcohol or other intoxicating substances, unless the person is unconscious or injured and requires immediate medical treatment as determined by a treating physician, or

- d. eluding or attempting to elude a law enforcement officer, or
- e. operating a motor vehicle without having been issued a valid driver's license, or while the license is under suspension, revocation, denial or cancellation, or
- f. an arrest based upon an outstanding warrant, or
- g. a traffic violation coupled with any offense stated in subparagraphs a through f of this paragraph, or
- h. an overweight violation, or the violation of a special permit exceeding the authorized permit weight, or
- i. a violation relating to the transportation of hazardous materials.

B. If the arrested person is eligible for release on personal recognizance as provided for in subsection A of this section, then the arresting officer shall:

1. Designate the traffic charge;

2. Record information from the arrested person's driver's license on the citation form, including the name, address, date of birth, personal description, type of driver's license, driver's license number, issuing state, and expiration date;

3. Record the motor vehicle make, model and tag information;

4. Record the arraignment date and time on the citation; and

5. Permit the arrested person to sign a written promise to appear as provided for in the citation.

The arresting officer shall then release the person upon personal recognizance based upon the signed promise to appear. The citation shall contain a written notice to the arrested person that release upon personal recognizance based upon a signed written promise to appear for arraignment is conditional and that failure to timely appear for arraignment shall result in the suspension of the arrested person's driver's license in this state, or in the nonresident's home state pursuant to the Nonresident Violator Compact.

C. The court, or the court clerk as directed by the court, may continue or reschedule the date and time of arraignment upon request of the arrested person or his attorney. If the arraignment is continued or rescheduled, the arrested person shall remain on personal recognizance and written promise to appear until such arraignment, in the same manner and with the same consequences as if the continued or rescheduled arraignment was entered on the citation by the arresting officer and signed by the defendant. An arraignment may be continued or rescheduled more than one time. Provided, however, the court shall require an arraignment to be had within a reasonable time. It shall remain the duty of the defendant to appear for arraignment unless the citation is satisfied as provided for in subsection D of this section.

D. A defendant released upon personal recognizance may elect to enter a plea of guilty or nolo contendere to the violation charged at any time before he is required to appear for arraignment by indicating such plea on the copy of the citation furnished to him or on a legible copy thereof, together with the date of the plea and signature. The defendant shall be responsible for assuring full payment of the fine and costs to the appropriate court clerk. Payment of the fine and costs may be made by personal, cashier's, traveler's, certified or guaranteed bank check, postal or commercial money order, or other form of payment approved by the court in an amount prescribed as bail for the offense. Provided, however, the defendant shall not use currency for payment by mail. If the defendant has entered a plea of guilty or nolo contendere as

provided for in this subsection, such plea shall be accepted by the court and the amount of the fine and costs shall be:

1. As prescribed in Section 1115.3 of this title as bail for the violation; or

2. In case of a municipal violation, as prescribed by municipal ordinance for the violation charged; or

3. In the absence of such law or ordinance, then as prescribed by the court.

E. 1. If, pursuant to the provisions of subsection D of this section, the defendant does not timely elect to enter a plea of guilty or nolo contendere and fails to timely appear for arraignment, the court may issue a warrant for the arrest of the defendant and the municipal or district court clerk, within one hundred twenty (120) calendar days from the date the citation was issued by the arresting officer, shall notify the Department of Public Safety that:

- a. the defendant was issued a traffic citation and released upon personal recognizance after signing a written promise to appear for arraignment as provided for in the citation,
- b. the defendant has failed to appear for arraignment without good cause shown,
- c. the defendant has not posted bail, paid a fine, or made any other arrangement with the court to satisfy the citation, and
- d. the citation has not been satisfied as provided by law.

Additionally, the court clerk shall request the Department of Public Safety to either suspend the defendant's driver's license to operate a motor vehicle in this state, or notify the defendant's home state and request suspension of the defendant's driver's license in accordance with the provisions of the Nonresident Violator Compact. Such notice and request shall be on a form approved or furnished by the Department of Public Safety.

2. The court clerk shall not process the notification and request provided for in paragraph 1 of this subsection if, with respect to such charges:

- a. the defendant was arraigned, posted bail, paid a fine, was jailed, or otherwise settled the case, or
- b. the defendant was not released upon personal recognizance upon a signed written promise to appear as provided for in this section or if released, was not permitted to remain on such personal recognizance for arraignment, or
- c. the violation relates to parking or standing or the transportation of hazardous materials, or
- d. a period of one hundred twenty (120) calendar days or more has elapsed from the date the citation was issued by the arresting officer.

F. Following receipt of the notice and request from the court clerk for driver's license suspension as provided for in subsection E of this section, the Department of Public Safety shall proceed as provided for in Section 1115.5 of this title.

G. The municipal or district court clerk shall maintain a record of each request for driver's license suspension submitted to the Department of Public Safety pursuant to the provisions of this section. When the court or court clerk receives appropriate bail or payment of the fine and costs, settles the citation, makes other arrangements with the defendant, or otherwise closes the case, the court clerk shall furnish proof thereof to such defendant, if the defendant personally appears, or shall mail such proof by first class mail, postage prepaid, to the defendant at the address noted on the citation or at such other address as is furnished by the

defendant. Additionally, the court or court clerk shall notify the home jurisdiction of the defendant as listed on the citation, if such jurisdiction is a member of the Nonresident Violator Compact, and shall, in all other cases, notify the Department, of the resolution of the case. The form of proof and the procedures for notification shall be approved by the Department of Public Safety. Provided, however, the court or court clerk's failure to furnish such proof or notice in the manner provided for in this subsection shall in no event create any civil liability upon the court, the court clerk, the State of Oklahoma or any political subdivision thereof, or any state department or agency or any employee thereof but duplicate proof shall be furnished to the person entitled thereto upon request.

SECTION 10. REPEALER Section 10, Chapter 387, O.S.L. 1994 (47 O.S. Supp. 1994, Section 762), is hereby repealed.

SECTION 11. This act shall become effective July 1, 1995.

SECTION 12. 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.