SHORT TITLE: Driving under the influence of alcohol; requiring certain percentage of certain fines be deposited and used for certain purpose. Effective date.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1368 By: Brown

AS INTRODUCED

An Act relating to driving under the influence of alcohol; amending 43A O.S. 1991, Section 3-453, as amended by Section 1, Chapter 612, O.S.L. 1996 (43A O.S. Supp. 1997, Section 3-453), which relates to substance abuse courses; amending 47 O.S. 1991, Section 11-902, as last amended by Section 5, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 11-902), which relates to driving under the influence of alcohol or other substance; amending 11 O.S. 1991, Section 14-111, which relates to enforcement of municipal ordinances; amending 11 O.S. 1991, Section 28-102, as last amended by Section 1, Chapter 51, O.S.L. 1997 (11 O.S. Supp. 1997, Section 28-102), which relates to maximum punishment for municipal court of record; amending 11 O.S. 1991, Section 27-122, which relates to enforcement of fines; amending 11 O.S. 1991, Section 27-122.2, which relates to community service in lieu of certain fines; amending 11 O.S. 1991, Section 27-112, which relates to fees, fines and forfeitures; amending 28 O.S. 1991, Section 153.1, as amended by Section 28, Chapter 303, O.S.L. 1992 (28 O.S. Supp. 1997, Section 153.1), which relates to cost of driving under the influence of alcohol in municipality; requiring certain percentage of certain fines, forfeited

recognizances and forfeited moneys be deposited to certain state revolving fund for certain purpose; specifying percentage to be deposited; requiring the Department of Mental Health and Substance Abuse Services to allot certain funds for certain purpose; providing exceptions to community service and satisfaction of fines; requiring certain action be taken when defendant refuses to pay certain portion of fine; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 43A O.S. 1991, Section 3-453, as amended by Section 1, Chapter 612, O.S.L. 1996 (43A O.S. Supp. 1997, Section 3-453), is amended to read as follows:

Section 3-453. A. Alcohol and drug substance abuse courses shall be offered only by nonprofit educational institutions of higher learning, governmental or nonprofit organizations.

B. Enrollment fees for those attending the courses shall be set by the Department of Mental Health and Substance Abuse Services and shall be within a range of not less than Sixty-five Dollars ($65.00) and not more than:

1. Eighty-five Dollars ($85.00) for a first offense; and

2. Two Hundred Fifty Dollars ($250.00) for a second or subsequent offense.

C. Ten percent (10%) of each fee collected shall be remitted to the State Treasurer to be credited to the Department of Mental Health and Substance Abuse Services Revolving Fund in the State Treasury and shall be used to provide substance abuse services <u>and treatment</u> to the indigent. Five percent (5%) of each fee collected

by the Department shall be used for the administrative costs related to providing such services.

D. Enrollment in the course shall not be limited to persons ordered to enroll, attend and successfully complete the course.

E. All alcohol and drug substance abuse courses for drinking drivers shall be approved and certified by the Department of Mental Health and Substance Abuse Services.

F. The Department of Mental Health and Substance Abuse Services, in consultation with D.U.I. School Administrators of Oklahoma, is authorized to promulgate rules governing:

1. Minimum curriculum requirements for such courses;

2. Facilities, equipment and instructional materials for such courses;

3. Minimum qualifications for certification of course instructors;

4. Grounds for revocation of the authority to conduct such courses and for revocation of an instructor's certification;

5. Attendance requirements; and

6. Guidelines for certifying to the Department of Mental Health and Substance Abuse Services successful completion of such course.

G. The Department shall require that each course for a first offense shall be conducted in no less than two sessions on two (2) separate days. For a second or subsequent offense, the Department shall require that:

1. Each such course shall consist of at least twenty-four (24) hours;

2. Each such course shall consist of no more than two (2) hours of education on any given day, nor more than four (4) hours in a given week, and shall not contain more than ten percent (10%) films or education on any one specialized area;

3. Each instructor shall be a qualified practitioner with one (1) year teaching experience, or a certified D.U.I. Instructor with five (5) years' teaching experience; and

4. No more than twelve students shall be allowed in a given class.

H. Any institution or organization authorized under this ~~act~~ section to conduct an alcohol and drug substance abuse course shall certify to the Department of Public Safety all persons who successfully complete such course.

I. Alcohol and drug substance abuse treatment programs shall be offered by facilities designated for that purpose by the Department of Mental Health and Substance Abuse Services. The facilities shall either be operated by the Department of Mental Health and Substance Abuse Services or shall be certified approved treatment facilities as provided for in the Oklahoma Alcohol and Drug Abuse Services Act.

J. ~~Any~~ Except as otherwise provided by the Oklahoma Community Sentencing Act, any person participating in a substance abuse treatment program shall be required to pay all or part of the actual cost incurred for treatment of the person, if the court determines that the person has the ability to pay for all or part of the cost of treatment. The court shall determine the amount of reimbursement the person shall pay.

K. The Department of Mental Health and Substance Abuse Services shall allocate the moneys received from municipal court fines as provided in Section 4 of this act for the purpose of aiding D.U.I. Schools and Drug Courts serving indigent offenders.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 5, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1997, Section 11-902), is amended to read as follows:

Section 11-902. A. It is unlawful 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. ~~The fine shall be~~ Upon conviction, the violator shall be imprisoned, fined not more than Two Thousand Five Hundred Dollars ($2,500.00), ordered to participate in and successfully complete a course of substance abuse treatment or substance abuse education, ordered to install an ignition interlock device, or any combination of the aforementioned penalties. ~~Such fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment.~~ Any person who is convicted of a second or subsequent felony offense pursuant to the provisions of this section shall be subject to imprisonment, a fine of not more than Five Thousand Dollars ($5,000.00), ordered to participate in and successfully complete a course of substance abuse treatment or substance abuse education, ordered to install an ignition interlock device, or any combination of the aforementioned penalties. ~~Said fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this section shall be subject to a fine of not more than Five Thousand Dollars ($5,000.00). Such~~ Any fine shall be in addition to other punishment provided for by law and shall not be imposed in lieu of such other punishment.

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; or

2. A correctional facility operated by the Department of Corrections where substance abuse treatment is available.

E. 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.

F. 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.

G. 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.

H. 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 Fifteen Dollars ($15.00) nor more than Twenty-five Dollars ($25.00) 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.

I. When prosecution under this section is the result of local police action, twenty-five percent (25%) of all fines, forfeited recognizances and other forfeitures imposed, lost or forfeited as a result of the offense shall be payable to the State Treasurer for deposit in the Department of Mental Health and Substance Abuse Services' Drug Abuse Education and Treatment Revolving Fund established in Section 2-503.2 of Title 63 of the Oklahoma Statutes, which shall be further divided as follows:

1. Fifty percent (50%) of the moneys received by the Department of Mental Health and Substance Abuse Services under this subsection shall be allocated to the appropriate providers which implement D.U.I. Schools pursuant to Section 3-453 of Title 43A of the Oklahoma Statutes to be used for the sole purpose of aiding indigent offenders in receiving substance abuse education courses; and

2. Fifty percent (50%) of the moneys received by the Department of Mental Health and Substance Abuse Services under this subsection shall be allocated to the expenditures incurred for drug testing and treatment of indigent persons participating in drug courts established pursuant to the provisions of the Oklahoma Drug Court Act.

SECTION 3. AMENDATORY 11 O.S. 1991, Section 14-111, is amended to read as follows:

Section 14-111. A. The governing body of a municipality may provide for enforcement of its ordinances and establish fines, penalties, or imprisonment, as authorized by subsections B through D of this section, for any offense in violation of its ordinances, which shall be recoverable with costs of suit. The governing body may provide that any person fined for violation of a municipal ordinance who is financially able but refuses or neglects to pay the fine or costs may be compelled to satisfy the amount owed by working on the streets, alleys, avenues, areas, and public grounds of the municipality, subject to the direction of the street commissioner or other proper officer, at a rate per day as the governing body may prescribe by ordinance, but not less than Five Dollars ($5.00) per day for useful labor, until the fine or costs are satisfied, except as otherwise provided by this act.

B. ~~Cities~~ Except as provided in Section 28-102 of this title, cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of Five Hundred Dollars ($500.00) and costs or imprisonment not exceeding ninety (90) days

or both the fine and imprisonment, but shall not have authority to enact any ordinance making unlawful an act or omission declared by state statute to be punishable as a felony. Provided, that cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding ninety (90) days or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges, and for violations of municipal ordinances regulating the offense of driving under the influence of alcohol or other intoxicating substance and driving while impaired.

C. Municipalities having a municipal court not of record may enact ordinances prescribing maximum fines of Two Hundred Dollars ($200.00) and costs pursuant to the provisions of Section 27-126 of this title or imprisonment not exceeding thirty (30) days or both the fine and imprisonment, provided that municipalities having only a municipal court not of record shall not have authority to enact any ordinance making unlawful any act or omission declared by state statute to be punishable as a felony. A municipal ordinance may not impose a penalty, including fine and costs, which is greater than that established by statute for the same offense. Provided, that municipalities having a municipal court not of record may enact ordinance prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding ninety (90) days or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges, and for violations of municipal ordinances regulating the offense of driving under the influence of alcohol or other intoxicating substance and driving while impaired.

D. Municipalities having both municipal criminal courts of record and municipal courts not of record may enact ordinances, within the authority of this section, for both such courts.

E. No municipality may levy a fine of over Fifty Dollars ($50.00) until it has compiled and published its penal ordinances as required in Sections 14-109 and 14-110 of this title.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-111.1 of Title 11, unless there is created a duplication in numbering, reads as follows:

When prosecution under a municipal ordinance is for an offense of driving under the influence of alcohol or other intoxicating substance or the offense of driving while impaired and such prosecution is the result of local police action, seventy-five percent (75%) of all municipal fines, forfeited recognizances and other forfeitures imposed, lost or forfeited due to such offenses shall be payable to the municipality, and twenty-five percent (25%) shall be payable to the State Treasurer to be deposited in the Department of Mental Health and Substance Abuse Services Drug Education and Treatment Revolving Fund established pursuant to Section 2-503.2 of Title 63 of the Oklahoma Statutes, which shall be further divided as follows:

a. fifty percent (50%) of the moneys received by the Department of Mental Health and Substance Abuse Services under this section shall be allocated to the appropriate providers which implement D.U.I. Schools pursuant to Section 3-453 of Title 43A of the Oklahoma Statutes to be used for the sole purpose of aiding indigent offenders in receiving substance abuse education courses, and

b. fifty percent (50%) of the moneys received by the Department of Mental Health and Substance Abuse Services under this section shall be allocated to the expenditures incurred for drug testing and treatment of indigent persons participating in state drug courts

established pursuant to the provisions of the Oklahoma Drug Court Act.

SECTION 5. AMENDATORY 11 O.S. 1991, Section 28-102, as last amended by Section 1, Chapter 51, O.S.L. 1997 (11 O.S. Supp. 1997, Section 28-102), is amended to read as follows:

Section 28-102. A. The municipal criminal courts of record shall have original jurisdiction to hear and determine all prosecutions when a violation of any of the ordinances of the city where the court is established is charged, as provided by Article VII, Section 1 of the Oklahoma Constitution.

B. Except in cases when the penalty provided for the violation of an ordinance does not exceed a fine in the amount of Two Hundred Dollars ($200.00), excluding court costs, or by imprisonment, or ~~by~~ both such fine and imprisonment, all persons charged before such municipal criminal court of record shall be entitled to a trial by jury, unless waived by the defendant. Judgment and sentence imposed by the judge shall be as effective as if the same had been rendered and imposed by a jury.

C. The maximum punishment that may be levied in any municipal criminal court of record is a fine not exceeding One Thousand Two Hundred Dollars ($1,200.00) and costs, an imprisonment not to exceed six (6) months, or both such fine and imprisonment. Provided, the maximum punishment that may be levied in any municipal criminal court of record for violations of municipal traffic ordinances not including ordinances relating to driving a motor vehicle under the influence of alcohol or drugs is a fine not exceeding Five Hundred Dollars ($500.00) and costs, an imprisonment not to exceed ninety (90) days, or both such fine and imprisonment. Provided, further that any municipal criminal court of record may levy a fine not to exceed One Thousand Dollars ($1,000.00) and costs, an imprisonment not to exceed six (6) months, or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of

wastewater and regulating stormwater discharges. A municipal ordinance may not impose a penalty greater than that established by state statute for the same offense.

D. When a defendant has been in jeopardy for the same or any lesser included offense in the municipal criminal court of record or district court, ~~he~~ the defendant shall not be prosecuted in any other court for the same or a lesser included offense.

SECTION 6. AMENDATORY 11 O.S. 1991, Section 27-122, is amended by read as follows:

Section 27-122. A. ~~If~~ Except as otherwise provided in this section, if a defendant who is financially able refuses or neglects to pay a fine or costs or both, payment may be enforced:

1. by imprisonment until the same shall be satisfied at the rate of Five Dollars ($5.00) per day; or

2. in the same manner as is prescribed in subsection B of this section for a defendant who is without means to make such payment.

B. If the defendant is without means to pay the fine or costs, the municipal judge may direct the total amount due to be entered upon the court minutes and to be certified to the district court in the county where the situs of the municipal government is located, where it shall be entered upon the district court judgment docket and shall have the full force and effect of a district court judgment. Thereupon the same remedies shall be available for the enforcement of the judgment as are available to any other judgment creditor.

C. When a percentage of a fine is directed to be deposited with the State Treasurer for the Department of Mental Health and Substance Abuse Services Drug Education and Treatment Revolving Fund pursuant to Section 4 of this act, that portion shall not be satisfied as authorized by paragraph 1 of subsection A of this section, and said portion shall be reduced to judgment as provided by subsection B of this section.

SECTION 7. AMENDATORY 11 O.S. 1991, Section 27-122.2, is amended to read as follows:

Section 27-122.2 Whenever any person is convicted in municipal court for violation of a municipal ordinance, the court may order the defendant to a term of community service or remedial action in lieu of fine or in conjunction with imprisonment, except for that portion directed to be paid to the State Treasurer under Section 4 of this act. If the defendant fails to perform the required community service or if the conditions of community service are violated, the judge may impose a sentence of imprisonment, not to exceed the maximum sentence allowable for the violation for which the defendant was convicted.

SECTION 8. AMENDATORY 11 O.S. 1991, Section 27-112, is amended to read as follows:

Section 27-112. All of the fees, fines, and forfeitures which come into the municipal court shall be paid by the clerk of the court to the municipal treasurer, except as provided in Section 4 of this act. The treasurer shall credit such deposits to the fund designated by the municipal governing body. The court clerk shall make duplicate receipts for the fees, fines, and forfeitures collected by ~~him~~ the clerk, one copy of which shall be retained by the municipal treasurer together with a detailed statement of all costs, the style of the case in which they were paid, and the name of the party paying the same. Any portion of the fine payable to the State Treasurer pursuant to Section 4 of this act shall be remitted on a form provided by the State Treasurer.

SECTION 9. AMENDATORY 28 O.S. 1991, Section 153.1, as amended by Section 28, Chapter 303, O.S.L. 1992 (28 O.S. Supp. 1997, Section 153.1), is amended to read as follows:

Section 153.1 In any case in which a defendant is charged with driving under the influence of alcohol or other intoxicating substance within a municipality with a municipal court other than a

court of record, one-half (1/2) of the costs charged in said case as provided for in Section 153 of ~~Title 28 of the Oklahoma Statutes~~ this title shall be paid to the municipality to be used to defer the cost of such prosecution to the municipality if the arresting officer was an employee of the municipality's law enforcement agency.

SECTION 10. This act shall become effective November 1, 1998.

46-2-2126 NP