

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2505

By: Mitchell of the House

and

Weedn of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending Section 1, Chapter 320, O.S.L. 1995, as amended by Section 2, Chapter 309, O.S.L. 1996, Section 2, Chapter 320, O.S.L. 1995, Section 3, Chapter 320, O.S.L. 1995, as amended by Section 3, Chapter 309, O.S.L. 1996 and Section 1, Chapter 309, O.S.L. 1996, as amended by Section 2, Chapter 106, O.S.L. 1999 (47 O.S. Supp. 1999, Sections 6-106.1, 6-106.2, 6-106.3 and 6-106.4), which relate to the Drunk Driving Prevention Act; modifying citations; expanding purpose of act; requiring specified amounts of community service or imprisonment for conviction of certain crimes by persons under twenty-one years of age; defining terms; amending 47 O.S. 1991, Sections 6-205, as last amended by Section 1, Chapter 293, O.S.L. 1998, 6-205.1, as last amended by Section 3, Chapter 106, O.S.L. 1999 and 6-211, as last amended by Section 3, Chapter 139, O.S.L. 1999 (47 O.S. Supp. 1999, Sections 6-205, 6-205.1 and 6-211), which relate to cancellation, suspension and revocation of driver licenses; requiring revocation of driver license under certain circumstances; prohibiting modification of certain revocations; amending 47 O.S. 1991, Section 11-902, as last amended by Section 11 of Enrolled House Bill No. 2711 of the 2nd Session of the 47th Oklahoma Legislature, which relates to driving under the influence; requiring community service or inpatient rehabilitation if conviction does not result in minimum amount of incarceration; requiring substance abuse assessment under certain circumstances; requiring installation of interlock device under certain circumstances; authorizing modifications under certain circumstances; amending 47 O.S. 1991, Section 756, as last amended by Section 10, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1999, Section 756), which relates to hearings for driver license revocations; modifying reference; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 1, Chapter 320, O.S.L. 1995, as amended by Section 2, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1999, 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 through 4 of this act shall be known and may be cited as the "Drunk Driving Prevention Act".

SECTION 2. AMENDATORY Section 2, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1999, Section 6-106.2), is amended to read as follows:

Section 6-106.2 The purpose of this act is to reduce the incidence of ~~death, injury and property damage in this state by those persons who drive~~ or are in actual physical control of a motor vehicle while under the influence of alcohol or other intoxicating substances.

SECTION 3. AMENDATORY Section 3, Chapter 320, O.S.L. 1995, as amended by Section 3, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1999, 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 or actual physical control 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 Section 1, Chapter 309, O.S.L. 1996, as amended by Section 2, Chapter 106, O.S.L. 1999 (47 O.S. Supp. 1999, Section 6-106.4), is amended to read as follows:

Section 6-106.4 A. It is unlawful, and punishable as provided in subsection B 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 this title; or

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

B. ~~1.~~ Any person under twenty-one (21) years of age who violates any provision of this section shall be subject to the seizure of the driver license of that person at the time of arrest or detention and the person, upon conviction, shall be guilty of operating or being in actual physical control of a motor vehicle while under the influence while under age and shall be punished:

a. ~~for~~

1. 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 assignment to and 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, ~~or;~~

~~b. upon~~

2. Upon a second or subsequent conviction, ~~shall be punished~~ by:

- a. assignment to and completion of not less than two hundred forty (240) hours of community service, and
- b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device for a period of not less than thirty (30) days, as ordered by the court, on every vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person, pursuant to Section 754.1 or 755 of this title. The installation of an ignition interlock device, as required by this subparagraph, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

In addition, a second conviction may 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, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by ~~any combination of fine, community service, or treatment~~ both; or

3. Upon a third or subsequent conviction, by:

- a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and
- b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device for a period of not less than thirty (30) days, as ordered by the court, on every vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person, pursuant to Section 754.1 or 755 of this title. The installation of an ignition interlock device, as required by this subparagraph, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

In addition, a third or subsequent conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than Two Thousand Dollars (\$2,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by both.

~~2.~~ C. The court may assess additional community service hours in lieu of any fine specified in this section.

~~3.~~ D. In addition to any penalty or condition imposed pursuant to the provisions of this section, the person ~~may~~ shall be subject to:

1. Upon a first conviction:

- a. the cancellation or denial of driving privileges as ordered by the court pursuant to Section 6-107.1 of this title, and
- b. ~~the seizure of the driver 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 this title, and~~

~~e.~~ the mandatory revocation of driving privileges pursuant to Section 6-205.1, 753 or 754 of this title, which revocation period may be modified as provided by law.

2. Upon a second or subsequent conviction:

- a. the cancellation or denial of driving privileges for a period of two (2) years or until the person attains eighteen (18) years of age, whichever is longer, pursuant to subsection B of Section 6-107.2 of this title,
- b. the mandatory revocation of driving privileges pursuant to Section 6-205.1, 753 or 754 of this title, which period may be modified as provided by law, and
- c. an assessment of the person's degree of alcohol abuse, in the same manner as prescribed in subsection H of Section 11-902 of this title, which may result in treatment as deemed appropriate by the court.

~~E.~~ E. Nothing in this section shall be construed to prohibit the filing of charges pursuant to Section 761 or 11-902 of this title when the facts warrant.

F. As used in this section:

1. The term "conviction" includes an adjudication or determination by a court that a person has committed an offense described in this section; and

2. The term "revocation" includes the cancellation or denial of driving privileges by the Department.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 6-205, as last amended by Section 1, Chapter 293, O.S.L. 1998 (47 O.S. Supp. 1999, 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, any violation of paragraph 1, 2, 3 or 4 of subsection A of Section 11-902 of this title or any violation of Section ~~6-106.4~~ 4 of this ~~title~~ act. However, the Department shall not additionally revoke ~~a license~~ the driving privileges of the person 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;

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;

7. Failure to pay for gasoline pumped into a vehicle pursuant to Section 1740 of Title 21 of the Oklahoma Statutes; or

8. A conviction for a violation of paragraph 3 of subsection A of Section 1151 of this title.

B. The first license revocation under any provision of this section, except for paragraph 2, 6, 7 or 8 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, 6, 7 or 8 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.

E. The first license revocation under paragraph 7 or 8 of subsection A of this section shall be for a period of six (6) months. A second or subsequent license revocation under paragraph 7 or 8 of subsection A of this section shall be for a period of one (1) year. Such periods shall not be modified.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 6-205.1, as last amended by Section 3, Chapter 106, O.S.L. 1999 (47 O.S. Supp. 1999, Section 6-205.1), is amended to read as follows:

Section 6-205.1 A. The 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 753 or 754 of this title shall be for one hundred eighty (180) days, which may be modified;~~

~~3. 2.~~ A revocation pursuant to paragraph 2 of subsection A of Section 6-205, or to Section 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, or to Section 753 or 754 of this title as shown by the Department's records. Such period ~~may~~ shall not be modified; or

~~4. 3.~~ A revocation pursuant to paragraph 2 of subsection A of Section 6-205, or to Section 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, or to Section 753 or 754 of this title as shown by the Department's records. Such period may be modified after one (1) year.

B. The driving privilege of a person who is convicted of any offense as provided in paragraph 6 of subsection A of Section 6-205 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 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;

2. A revocation 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, or under Section 753 or 754 of this title as shown by the Department's records. Such period may be modified; or

3. A revocation 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, or under Section 753 or 754 of this title as shown by the Department's records. Such period may be modified.

The revocation of the driving privilege of any person under this subsection shall not run concurrently with any other withdrawal of driving privilege resulting from a different incident and which requires the driving privilege to be withdrawn for a prescribed amount of time. A denial based on a conviction of any offense as provided in paragraph 6 of subsection A of Section 6-205 of this title shall become effective on the first day the convicted person is otherwise eligible to apply for and be granted driving privilege if the person was not eligible to do so at the time of the conviction.

C. For the purposes of this subsection, ~~the~~ the:

1. The term "conviction" ~~shall include~~ includes any adjudication or determination by a court that a person has committed the offense, or any notification from a court pursuant to Section 6-107.1 of this title; and

~~C.~~ 2. The term "revocation" ~~as used in this section~~ includes a denial of driving privileges by the Department.

D. Each period of revocation not subject to modification shall be mandatory and neither the Department nor any court shall grant driving privileges based upon hardship or otherwise for the duration

of that period. ~~The~~ Each period of revocation periods, subject to modification as provided for in this section, may be modified as provided for in Section 754.1 or 755 of this title.

E. Any appeal of a revocation or denial of driving privileges shall be governed by Section 6-211 of this title.

SECTION 7. AMENDATORY 47 O.S. 1991, Section 6-211, as last amended by Section 3, Chapter 139, O.S.L. 1999 (47 O.S. Supp. 1999, Section 6-211), is amended to read as follows:

Section 6-211. A. Any person denied driving privileges, or whose driving privilege has been canceled, denied, suspended or revoked by the Department, except where such cancellation, denial, suspension or revocation is mandatory, under the provisions of Section 6-205 of this title, shall have the right of appeal to the district court as hereinafter provided. Proceedings before the district court shall be exempt from the provisions of the Oklahoma Pleading and Discovery codes, except that the appeal shall be by petition, without responsive pleadings. The district court is hereby vested with original jurisdiction to hear said petition.

B. A person whose driving privilege is denied, canceled, revoked or suspended due to inability to meet standards prescribed by law, or due to an out-of-state conviction or violation, or due to an excessive point accumulation on the traffic record, or for an unlawful license issued, may appeal in the county in which the person resides.

C. Any person whose driving privilege is canceled, denied, suspended or revoked may appeal to the district court in the county in which the offense was committed upon which the Department based its order.

D. A person whose driving privilege is revoked or denied or who is denied a hearing pursuant to Section 753 or 754 of this title may appeal to the district court in the county in which the arrest

occurred relating to the test refusal or test result, as shown by the records of the Department.

E. The petition shall be filed within thirty (30) days after the order has been served upon the person, except a petition relating to an implied consent revocation shall be filed within thirty (30) days after the Department gives notice to the person that the revocation is sustained as provided in Section 754 of this title. It shall be the duty of the district court to enter an order setting the matter for hearing not less than fifteen (15) days and not more than thirty (30) days from the date the petition is filed. A certified copy of petition and order for hearing shall be served forthwith by the clerk of the court upon the Commissioner of Public Safety by certified mail at the Department of Public Safety, Oklahoma City, Oklahoma.

F. At a hearing on a revocation by the Department pursuant to the implied consent laws as provided in Section 6-205.1, 753 and 754 of this title, the court shall not consider the merits of the revocation action unless a written request for an administrative hearing was timely submitted to the Department and the person actually exercised the opportunity to appear as provided in Section 754 of this title and the Department entered an order sustaining the revocation.

G. Upon a hearing relating to a revocation pursuant to a conviction for an offense enumerated in Section 6-205 of this title, the court shall not consider the propriety or merits of the revocation action, except to correct the identity of the person convicted as shown by records of the Department.

H. In the event the Department declines to modify a revocation order issued pursuant to Section 753, Section 754, paragraph 2 of subsection A of Section 6-205 or Section 6-205.1 of this title, which is subject to modification pursuant to Section 4 of this act or Section 6-205.1 of this title, a petition for modification may be

included with the appeal or separately filed at any time, and the district court may, in its discretion, modify the revocation as provided for in Section 755 of this title.

I. The court shall take testimony and examine the facts and circumstances, including all of the records on file in the office of the Department of Public Safety relative to the offense committed and the driving record of the person, and determine from the facts, circumstances, and records whether or not the petitioner is entitled to driving privileges or shall be subject to the order of denial, cancellation, suspension or revocation issued by the Department. The court may also determine whether or not, from the person's previous driving record, the order was for a longer period of time than such facts and circumstances warranted. In case the court finds that the order was not justified, the court may sustain the appeal, vacate the order of the Department and direct that driving privileges be restored to the petitioner, if otherwise eligible. The court may, in case it determines the order was justified, but that the period of the suspension or revocation was excessive, enter an order modifying the same as provided by law.

J. The testimony of any hearing pursuant to this section shall be taken by the court stenographer and preserved for the purpose of appeal and, in case the Department files notice of appeal from the order of the court as provided herein, the court shall order and direct the court clerk to prepare and furnish a complete transcript of all pleadings and proceedings, together with a complete transcript taken at said hearing at no cost to the Department, except the cost of transcribing.

K. In order to stay or supersede any order of the Department, the petitioner may execute and file a cash appeal bond in the sum of Two Hundred Fifty Dollars (\$250.00) with the clerk of the court, to be approved by the court clerk. A certified copy of the bond

endorsed with the approval of the court clerk shall be served along with the notice of hearing and petition.

The bond shall be to the State of Oklahoma and conditioned that the petitioner will prosecute the appeal with due diligence and during pendency of the appeal abide by and not violate any of the laws of this state or any other state in the operation of a motor vehicle, and that the petitioner will abide by and perform the final judgment of the court therein, and in case the appeal is finally denied the appellant will pay all court costs incurred in the appeal in the district court. If the petitioner is convicted of a traffic offense during the pendency of the appeal or fails to prosecute the appeal with due diligence, the bond may be forfeited to the court fund upon application by the Department and after hearing before the court in which the appeal is pending.

L. After filing and approval of the appeal bond and the furnishing thereof to the Department as hereby provided, the Department shall restore driving privileges to the person if otherwise eligible, and the person shall be permitted to operate a motor vehicle pending the appeal, under terms and conditions as prescribed in the bond which shall include the installation of an ignition interlock device on every motor vehicle operated by the person, pursuant to Section 754.1 or 755 of this title, if the person was denied modification pursuant to any provision of paragraph 2 of subsection A of Section 6-205 or Section 6-205.1, 753 or 754 of this title; provided, however, if the order of the Department is sustained in final judgment, the court shall, in such final judgment, enter an order extending the period of suspension or revocation for such time as the petitioner was permitted to operate motor vehicles under the provisions of an appeal bond, and the court shall also in such final judgment direct and require the immediate surrender of any driver license or licenses to the Department.

M. An appeal may be taken by the person or by the Department from the order or judgment of the district court to the Supreme Court of the State of Oklahoma as otherwise provided by law.

SECTION 8. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 11 of Enrolled House Bill No. 2711 of the 2nd Session of the 47th 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.

C. ~~Every~~ 1. Any 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 by a fine of not more than One Thousand Dollars (\$1,000.00).

2. 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).

Any person who, within ten (10) years after a previous conviction of a violation of murder in the second degree or manslaughter in the first degree in which the death was caused as a result of driving under the influence of alcohol or other intoxicating substance, is convicted of a violation of this section shall be deemed guilty of a felony.

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).

In any case in which a defendant is charged with a second or subsequent driving under the influence of alcohol or other intoxicating substance offense within any municipality with a municipal court other than a court of record, the charge shall be presented to the county's district attorney and filed with the district court of the county within which the municipality is located.

D. When a person is sentenced to imprisonment in the custody of the Department of Corrections, the person shall be processed through the Lexington Assessment and Reception Center or at a place determined by the Director of the Department of Corrections. 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.

E. In the event a first felony conviction does not result in the person being sentenced to the custody of the Department of Corrections for at least five (5) days, which is not suspended or deferred, the person shall be required to ~~serve~~ perform not less than ~~ten (10) days~~ two hundred forty (240) hours 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~~ five (5) days, notwithstanding the provisions of Sections 991a, 991a-2 and 996.3 of Title 22 of the Oklahoma Statutes. In the event a second or subsequent felony conviction does not result in the person being sentenced to the custody of the Department of Corrections for at

least ten (10) days, which is not suspended or deferred, the person shall be required to perform not less than four hundred eighty (480) hours of community service or to undergo inpatient rehabilitation treatment in a public or private facility with at least minimum security for a period of not less than ten (10) days 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~~ shall certify to the Department of Public Safety that a person has participated in an alcohol and substance abuse evaluation and assessment program, as provided in subsection H of this section, and successfully completed a any drug treatment program required by the court 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, if the person is otherwise eligible.

G. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked ~~license~~ driving privilege when the ~~applicant~~ person meets the statutory requirements which affect the existing driving privilege.

H. ~~Except as provided in subsection J of this section, any~~ 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 and assessment program offered by a facility or qualified practitioner certified by the Department of Mental Health and Substance Abuse Services for the purpose of evaluating and assessing 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 and assessment. 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 and assessment shall not exceed Seventy-five Dollars (\$75.00). The evaluation and assessment 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 evaluated and assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. If such report indicates that the evaluation and assessment shows that the defendant would benefit from a treatment program, the court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in an alcohol and drug substance abuse treatment program at an approved treatment facility as defined by Section 3-403 of Title 43A of the Oklahoma Statutes. No person, agency or facility operating an alcohol and drug substance abuse evaluation and assessment program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated and assessed 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 imprisonment in 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 and assessment 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 and assessment required by this subsection. If the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment, the Department of Public Safety shall not reinstate driving privileges until the defendant has complied in full with such order. 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. 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 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.

J. Any person who is found guilty of a ~~felony~~ second or subsequent violation of the provisions of this section, ~~who receives~~

~~a suspended sentence and who does not already have an ignition interlock device installed pursuant to Section 754.1 of this title,~~ shall ~~as a condition of that suspended sentence be required~~ ordered by the court to have installed, after the conclusion of the mandatory revocation period pursuant to Section 6-205.1 of this title, on every vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person pursuant to Sections 754.1 and 755 of this title, an ignition interlock device approved by the Department of Public Safety at the person's own expense for a period of not less than ~~six~~ (6) months nor more than three (3) years. ~~The ignition interlock device shall be placed on the motor vehicle owned by the defendant or on the vehicle most regularly operated by the defendant~~ thirty (30) days. The person shall pay the monthly maintenance fee for ~~the~~ each ignition interlock device ~~as a condition of the suspended sentence installed pursuant to this subsection.~~ The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

K. 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 law of another state prohibiting the offense provided in subsection A of this section or a violation of a municipal ordinance prohibiting the offense provided in subsection A of this section, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be required to undergo the alcohol and drug substance evaluation program required by subsection H of this section. The court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in an alcohol and drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

L. Any person who is found guilty of a violation of the provisions of this section who has been sentenced by the court to perform any type of community service shall not be permitted to pay a fine in lieu of performing the community service.

SECTION 9. AMENDATORY 47 O.S. 1991, Section 756, as last amended by Section 10, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1999, 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 ~~4~~ 4 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 10. RECODIFICATION Section 1, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1999, Section 6-106.1), as last amended by Section 1 of this act, shall be recodified as Section 11-906.1 of Title 47 of the Oklahoma Statutes, unless there is created a duplication in numbering; Section 2, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1999, Section 6-106.2), as amended by Section 2 of this act, shall be recodified as Section 11-906.2 of Title 47 of the Oklahoma Statutes, unless there is created a duplication in numbering; Section 3, Chapter 320, O.S.L. 1995 (47 O.S. Supp. 1999, Section 6-106.3), as last amended by Section 3 of this act, shall be

recodified as Section 11-906.3 of Title 47 of the Oklahoma Statutes, unless there is created a duplication in numbering; Section 1, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1999, Section 6-106.4), as last amended by Section 4 of this act, shall be recodified as Section 11-906.4 of Title 47 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 11. This act shall become effective September 30, 2000.

47-2-9537 LAC 6/11/15