ENGROSSED HOUSE
BILL NO. 1783

By: Askins, Vaughn, Boyd, Pettigrew, Adkins and Perry of the House

and

Helton of the Senate

(motor vehicles - amending 47 O.S., Section 11-902 - driving while under the influence of alcohol - prior offenses - codification - effective date)

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 3, Chapter 89, O.S.L. 1998 (47 O.S. Supp. 1998, 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 not more than Two Thousand Five Hundred Dollars ($2,500.00). 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 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 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 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, within ten (10) years after a previous conviction of a violation of Murder in the 2nd Degree or Manslaughter in the 1st 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).

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 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. 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~~ the fee.

I. 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 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-902a of Title 47, unless there is created a duplication in numbering, reads as follows:

A. After a conviction for an offense under Section 11-902 of Title 47 of the Oklahoma Statutes, a district attorney may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted person has been previously convicted in this state or any other jurisdiction of one or more of the offenses listed in Section 11-902 of Title 47 of the Oklahoma Statutes.

B. Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted person of the time and place set for the hearing. Upon receiving notice from the court of the time and place set for a hearing under this section, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle a written notice that includes:

1. A full description of the motor vehicle;

2. The time and place of the forfeiture hearing;

3. The legal authority under which the motor vehicle may be forfeited; and

4. Notice of the right to intervene to protect the interest in the motor vehicle.

C. At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that:

1. The person has an interest in the motor vehicle acquired in good faith;

2. The person is not the person convicted of the offense that resulted in the forfeiture proceeding; and

3. Before parting with the motor vehicle, the person did not know or have reasonable cause to believe that it would be used in the commission of an offense.

D. If a person satisfies the requirements of subsection C of this section, the court shall order that an amount equal to the value of the interest of that person in the motor vehicle shall be paid to that person upon sale of the motor vehicle.

E. At the hearing, the court may order the forfeiture of the motor vehicle if it is determined by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

1. Deterrence of the convicted person from the commission of future offenses under Section 11-902 of Title 47 of the Oklahoma Statutes;

2. Protection of the safety and welfare of the public;

3. Deterrence of other persons who are potential offenders under Section 11-902 of Title 47 of the Oklahoma Statutes; and

4. Expression of public condemnation of the serious or aggravated nature of the conduct of the convicted person.

F. Upon forfeiture of a motor vehicle the court shall require the surrender of the motor vehicle, the certificate of title and registration of the motor vehicle. The vehicle, the certificate of title and registration shall be delivered to the state. A motor vehicle forfeited pursuant to this section, shall be disposed of by the district attorney as provided by law, with the proceeds of the sale being used to fund the costs of the forfeiture proceeding and the balance to the benefit of the district attorney's office.

SECTION 3. This act shall become effective November 1, 1999.

Passed the House of Representatives the 23rd day of February, 1999.

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Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1999.

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President of the Senate