ENGROSSED SENATE
BILL NO. 695

By: Smith of the Senate

and

Mitchell of the House

An Act relating to driving under the influence of intoxicating substance; defining terms; amending Section 1, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1998, Section 6-106.4), which relates to driving under the influence by underage drivers; clarifying language; deleting certain definition; amending 47 O.S. 1991, Section 6-205.1, as last amended by Section 6, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1998, Section 6-205.1), which relates to revocation of driving privilege; deleting provision for first offense; clarifying revocation periods and requirements; providing revocation periods for first and subsequent offenses; requiring certain revocation periods not be concurrent with other revocation of driver privileges; amending 47 O.S. 1991, Sections 11-902, as last amended by Section 4, Chapter 420, O.S.L. 1997, and 11-902, as last amended by Section 3, Chapter 89, O.S.L. 1998 (47 O.S. Supp. 1998, Section 11-902), which relate to driving under the influence of alcohol; deleting certain definition; amending 47 O.S. 1991, Section 751, as last amended by Section 4, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1998, Section 751), which relates to consent to testing; deeming certain persons in actual physical control of vehicles as consenting to certain tests; clarifying language; amending 47 O.S. 1991, Section 753, as amended by Section 6, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1998, Section 753), which relates to refusal to be tested; deleting specific purpose of testing; modifying language; amending 47 O.S. 1991, Section 754, as last amended by Section 1, Chapter 227, O.S.L. 1997 (47 O.S. Supp. 1998, Section 754), which relates to test evidence; clarifying language; providing certain report and tests results to be true for purposes of hearing under certain circumstance; providing for hearing on driving privileges to be held in the county of arrest by a hearing officer or the Commissioner of Public Safety; amending 47 O.S. 1991, Section 754.1, as last amended by Section 6, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1998, Section 754.1), which relates to modification of driver privilege; making certain employer vehicles subject to mandatory interlock device for license modification; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-140.1 of Title 47, unless there is created a duplication in numbering, reads as follows:

For purposes of this title, "other intoxicating substance" means any controlled dangerous substance, as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor function.

SECTION 2. AMENDATORY Section 1, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1998, Section 6-106.4), is amended to read as follows:

Section 6-106.4 A. It is unlawful, and punishable as provided in subsection ~~C~~ 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 ~~Title 47 of the Oklahoma Statutes~~ this title; or

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

B. ~~As used in this section, the term "other intoxicating substance" means any controlled dangerous substance as defined in the Uniform Controlled Dangerous Substances Act, Section 2-101 et seq. of Title 63 of the Oklahoma Statutes, or any other substance,~~

~~other than alcohol, which is capable of being ingested, inhaled, injected, or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing, or other sensory or motor function.~~

~~C.~~ 1. Any person under twenty-one (21) years of age who violates any provision of this section shall, upon conviction, be guilty of ~~driving~~ operating or being in actual physical control of a motor vehicle while under the influence while under age~~. A violator~~ and shall be punished:

a. for a first offense by a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), or by completion of twenty (20) hours of community service, or by requiring the person to attend and complete a treatment program, or by any combination of fine, community service, or treatment~~.~~, or

~~2. Any violator,~~

b. upon a second or subsequent conviction, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or by completion of forty (40) hours of community service, or by requiring the person to attend and complete a treatment program, or by any combination of fine, community service, or treatment.

~~3.~~ 2. The court may assess additional community service hours in lieu of any fine specified in this section.

~~4.~~ 3. In addition to any penalty imposed pursuant to the provisions of this section, the person may be subject to:

a. the cancellation or denial of driving privileges as ordered by the court pursuant to Section 6-107.1 of ~~Title 47 of the Oklahoma Statutes~~ this title,

b. the seizure of the ~~drivers~~ 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 ~~Title 47 of the Oklahoma Statutes~~ this title, and

c. the mandatory revocation of driving privileges pursuant to Section 6-205.1 of ~~Title 47 of the Oklahoma Statutes~~ this title, which revocation period may be modified as provided by law.

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

SECTION 3. AMENDATORY 47 O.S. 1991, Section 6-205.1, as last amended by Section 6, Chapter 309, O.S.L. 1996 (47 O.S. Supp. 1998, Section 6-205.1), is amended to read as follows:

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

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

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

3. ~~The first license revocation pursuant to paragraph 6 of subsection A of Section 6-205 of this title shall be for one hundred~~

~~eighty (180) days, which may be modified; provided, for license revocations for a misdemeanor charge of possessing a controlled dangerous substance, the provisions of this paragraph shall apply to any such revocations by the Department on or after January 1, 1993;~~

~~4.~~ A revocation pursuant to paragraph 2 ~~or 6~~ of subsection A of Section 6-205, 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 be modified; or

~~5.~~ 4. A revocation pursuant to paragraph 2 ~~or 6~~ 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.

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. For the purposes of this subsection, the term "conviction" shall include any notification from a court pursuant to Section 6-107.1 of this title.

C. The term "revocation" as used in this section includes a denial of driving privileges by the Department ~~to issue a driver's license~~.

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

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

SECTION 4. AMENDATORY 47 O.S. 1991, Section 11-902, as last amended by Section 4, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1998, Section 11-902), 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 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.

SECTION 5. 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.

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 fee.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 751, as last amended by Section 4, Chapter 313, O.S.L. 1995 (47 O.S. Supp. 1998, Section 751), is amended to read as follows:

Section 751. A. 1. 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~~

2. 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~~ may direct the administration of or administer the test or tests.

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~~ the person's own recognizance for medical reasons by the arresting officer. The arresting officer who releases an arrested person on ~~his~~ the person's own recognizance must indicate ~~that he has done so~~ the release on the face of the citation. Any person released on ~~their~~ his or her 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 7. AMENDATORY 47 O.S. 1991, Section 753, as amended by Section 6, Chapter 238, O.S.L. 1993 (47 O.S. Supp. 1998, Section 753), is amended to read as follows:

Section 753. If a conscious person under arrest refuses to submit to testing of his or her blood or breath for the purpose of determining the alcohol concentration thereof, or to a test of his or her blood, saliva or urine for the purpose of determining the concentration of any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance, none shall be given, unless the investigating officer has probable cause to believe that the person under arrest, while intoxicated, has

operated ~~his~~ the motor vehicle in such a manner as to have caused the death or serious physical injury of any other person or persons. In such event, such test otherwise authorized by law may be made in the same manner as if a search warrant had been issued for such test or tests. The sample shall be taken in a medically acceptable manner at a hospital or other suitable health care facility. The Commissioner of Public Safety, upon the receipt of a sworn report of the law enforcement officer that ~~he~~ the officer had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a motor vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance and that the person had refused to submit to the test or tests, shall revoke ~~his or her~~ the license to drive and any nonresident operating privilege for a period as provided by Section 6-205.1 of this title. If the person is a resident or a nonresident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety shall deny to the person the issuance of a license or permit for a period as provided by Section 6-205.1 of this title subject to a review as provided in Section 754 of this title. The revocation or denial shall become effective thirty (30) days after the arrested person is given written notice thereof by the ~~arresting~~ officer or by the Department as provided in Section 754 of this title.

SECTION 8. AMENDATORY 47 O.S. 1991, Section 754, as last amended by Section 1, Chapter 227, O.S.L. 1997 (47 O.S. Supp. 1998, Section 754), is amended to read as follows:

Section 754. A. Any arrested person who is under twenty-one (21) years of age and has any measurable quantity of alcohol in the person's blood or breath, or any person twenty-one (21) years of age or older whose alcohol concentration is ten-hundredths (0.10) or

more as shown by a breath test administered according to the provisions of this title, or any arrested person who has refused to submit to a breath or blood test ~~for alcohol concentration~~, shall immediately surrender his or her driver license, permit or other evidence of driving privilege to the arresting law enforcement officer. The officer shall seize any driver 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 surrendered to or seized by the officer has not expired and otherwise appears valid ~~to the officer~~, the officer shall issue to the arrested person a dated receipt for that driver license, permit, or other evidence of driving privilege on a form prescribed by the Department of Public Safety. This receipt shall be recognized as a driver license and shall authorize the arrested person to operate a motor vehicle for a period not to exceed thirty (30) days. The receipt form shall contain and constitute a notice of revocation of driving privilege by the Department ~~of Public Safety~~ effective in thirty (30) days. The ~~seized license, permit, or other~~ evidence of driving privilege and a copy of the receipt form issued to the arrested person shall be attached to the sworn report of the ~~arresting~~ officer and shall be submitted by mail or in person to the ~~Commissioner of Public Safety or a designated representative~~ Department 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, if under twenty-one (21) years of age, had any measurable quantity of alcohol in the person's blood or breath, ~~if the person is under twenty-one (21) years of age,~~ or, if the arrested person is twenty-one (21) years of age or older, ~~an~~

a blood or breath alcohol concentration of ten-hundredths (0.10) or more, accompanied by a sworn report from a law enforcement officer that the officer had reasonable grounds to believe the arrested person had been ~~driving~~ operating or was in actual physical control of a motor vehicle ~~upon the public roads, highways, streets, turnpikes or other public place of this state~~ while under the influence of alcohol as prohibited by law, the ~~Commissioner of Public Safety~~ Department shall revoke or deny the ~~privilege to drive~~ driving privilege of the arrested person ~~and any nonresident operating privilege~~ for a period as provided by Section 6-205.1 of this title. Revocation or denial of the ~~license~~ driving privilege 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 in this section or by the Department as provided in Section 2-116 of this title.

D. Upon the written request of a person whose driving privilege ~~to drive~~ has been revoked or denied, the ~~Commissioner of Public Safety~~ Department shall grant the person an opportunity to be heard if the request is received by the Department within fifteen (15) days after the notice of the revocation is given in accordance with this section or Section 2-116 of this title. The sworn report of the officer, together with the results of any test or tests, shall be deemed true, absent any facial deficiency, should the requesting person fail to appear at the scheduled hearing. A timely request shall ~~also operate to~~ stay the ~~revocation or denial by~~ order of the Department until the disposition of the hearing unless the person is under cancellation, denial, suspension or revocation for some other reason. The Department may issue a temporary driving permit pending disposition of the hearing, if the person is otherwise eligible. If the hearing request is not timely filed, the revocation or denial shall be sustained.

E. 1. At any hearing held relevant to this section, a report of the findings of the laboratory of the Oklahoma State Bureau of Investigation, the medical examiner's report of investigation or autopsy report, or a laboratory report from a forensic laboratory operated by the State of Oklahoma or any political subdivision thereof, which has been made available to the person by the Commissioner or an authorized representative at least five (5) days prior to the hearing, with reference to all or part of the evidence submitted, when certified as correct by the persons making the report shall be received as evidence of the facts and findings stated, if relevant and otherwise admissible in evidence. If such report is deemed relevant by either party, the court shall admit such report without the testimony of the person making the report, unless the court, pursuant to this subsection, orders such person to appear.

2. When any alleged controlled dangerous substance has been submitted to the laboratory of the OSBI for analysis, and such analysis shows that the submitted material is a controlled dangerous substance, the distribution of which constitutes a felony under the laws of this state, no portion of such substance shall be released to any other person or laboratory absent an order of a district court. The defendant shall additionally be required to submit to the court a procedure for transfer and analysis of the subject material to ensure the integrity of the sample and to prevent the material from being used in any illegal manner.

3. The court, upon motion of either party, shall order the attendance of any person preparing a report submitted as evidence in the hearing when it appears there is a substantial likelihood that material evidence not contained in said report may be produced by the testimony of any person having prepared a report. The hearing shall be held and, if sustained, an order issued not less than five (5) days prior to the time when the testimony shall be required.

4. If within five (5) days prior to the hearing or during a hearing, a motion is made pursuant to this section requiring a person having prepared a report to testify, the court may hear a report or other evidence but shall continue the hearing until such time notice of the motion and hearing is given to the person making the report, the motion is heard, and, if sustained, the testimony ordered can be given.

F. The hearing ~~shall be~~ before the Commissioner of Public Safety or ~~an authorized agent, in the troop headquarters of the Oklahoma Highway Patrol nearest the county wherein the alleged events occurred for which the person was arrested, unless the Commissioner of Public Safety or an authorized agent directs the hearing be held in some other county;~~ a designated hearing officer shall be conducted in the county of arrest or~~, the Commissioner or an authorized agent~~ may ~~schedule the hearing by telephone and conduct the hearing~~ be conducted 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~~ operating or was in actual physical control of a vehicle upon the public roads, highways, streets, turnpikes or other public place of this state while under the influence of alcohol, any other intoxicating substance, or the combined influence of alcohol and any other intoxicating substance as prohibited by law, and whether the person was placed under arrest.

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

a. the testing procedures used were in accordance with ~~existent~~ the rules of the Board ~~of Tests for Alcohol and Drug Influence~~,

b. the person was not denied a timely requested breath or blood test,

c. the ~~breath or blood~~ specimen was obtained from the person within two (2) hours of the arrest of the person,

d. the person, if under twenty-one (21) years of age, was advised that ~~the privilege to drive~~ driving privileges would be revoked or denied if the test result reflected the presence of any measurable quantity of alcohol,

e. the person was informed that a separate testing of the sample taken by the breathalyzer can be analyzed by the person at his or her own expense within sixty (60) days of the test date,

f. the person, if twenty-one (21) years of age or older, was advised that ~~the privilege to drive~~ driving privileges would be revoked or denied if the test result reflected an alcohol concentration of ten-hundredths (0.10) or more, and

g. the test result in fact reflects such alcohol concentration~~;~~.

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

a. the person refused to submit to the test or tests, and

b. the person was informed that ~~the privilege to drive~~ driving privileges would be revoked or denied if the person refused to submit to the test or tests.

G. After the hearing, the Commissioner of Public Safety or ~~an authorized agent~~ a designated hearing officer shall order the revocation or denial either rescinded or sustained.

SECTION 9. AMENDATORY 47 O.S. 1991, Section 754.1, as last amended by Section 6, Chapter 420, O.S.L. 1997 (47 O.S. Supp. 1998, 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 when it is determined by the Department that no other adequate means of transportation exists for the person whose ~~license~~ driving privilege has been revoked or denied.

B. As a prerequisite and condition of any modification, the person shall be required to have installed an ignition interlock device approved by the Department, at the person's own expense, upon every motor vehicle operated by such person, ~~except~~ provided, the Department shall not require as a condition of modification the device to be installed upon any vehicle owned or leased by an employer of the person, except when the person is self-employed or employed by relatives within the first degree of consanguinity or who resides in the same household, without the employer's written permission to install the ignition interlock device on any vehicle to be operated by the person during the course of employment. The permission to install the ignition interlock device shall be in writing on the official letterhead of the employer. The person shall comply with all provisions of law regarding ignition interlock devices.

C. 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 10. 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.

Passed the Senate the 2nd day of March, 1999.

_____
President of the Senate

Passed the House of Representatives the ____ day of _____ , 1999.

_____
Speaker of the House of Representatives