

ENROLLED HOUSE
BILL NO. 1088

By: Worthen, Adair, Adkins, Bengé,
Blackburn, Bonny, Braddock, Bryant,
Calvey, Claunch, Coleman, Dank, Davis,
Deutschendorf, Dunegan, Easley,
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Miller, Mitchell, Morgan, Nance,
Newport, Paulk, Perry, Pettigrew, Pope
(Tim), Reese, Rice, Roggow, Seikel,
Stites, Sullivan (John), Sullivan
(Leonard), Thornbrugh, Tyler, Vaughn,
Webb, Winchester and Wright of the
House

and

Campbell of the Senate

An Act relating to motor vehicles; amending 47 O.S. 1991, Section 11-902, as last amended by Section 5 of Enrolled Senate Bill No. 695 of the 1st Session of the 47th Oklahoma Legislature, which relates to driving while under the influence of alcohol; stating penalties; requiring community service or inpatient treatment under certain circumstances; requiring installation of ignition interlock device under certain circumstances; requiring payment of fee; establishing crime of allowing use of motor vehicle without device; stating penalty; amending Section 14, Chapter 276, O.S.L. 1993, as amended by Section 8, Chapter 89, O.S.L. 1998 (57 O.S. Supp. 1998, Section 612), which relates to classification of persons convicted of driving under the influence; authorizing treatment placement; specifying conditions; providing for codification; and providing an 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 5 of Enrolled Senate Bill 695 of the 1st 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 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 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 shall be of 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~~ 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). 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~~ 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). 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. 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.

~~E. F.~~ 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.

~~F. G.~~ 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.

~~G. H.~~ 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.

~~H.~~ 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 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 to have installed 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. The person shall pay the monthly maintenance fee for the ignition interlock device as a condition of the suspended sentence. 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.

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:

No person shall knowingly authorize or permit a motor vehicle owned or under the control of that person which is not equipped with an ignition interlock device to be driven upon any street or highway of this state by any person who is required to have an ignition interlock device installed upon the vehicle of that person. A violation of this section shall be a misdemeanor and shall be punishable by a fine of not more than Five Hundred Dollars (\$500.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

SECTION 3. AMENDATORY Section 14, Chapter 276, O.S.L. 1993, as amended by Section 8, Chapter 89, O.S.L. 1998 (57 O.S. Supp. 1998, Section 612), is amended to read as follows:

Section 612. A. Any person convicted of violating the provisions of Section 11-902 of Title 47 of the Oklahoma Statutes and sentenced to the custody of the Department of Corrections shall be processed through the Lexington Assessment and Reception Center or other location determined by the Director of the Department of Corrections, classified and assigned as follows:

1. To the Department of Mental Health and Substance Abuse Services for substance abuse treatment, if the person is evaluated to be receptive to treatment and not deemed by the Department of Corrections to be a security risk. The inmate may be required to reimburse the Department of Mental Health and Substance Abuse Services for all or part of the actual cost incurred for treatment of the inmate while the inmate is assigned to the Department of Mental Health and Substance Abuse Services. The Department of Corrections shall determine whether the inmate has the ability to pay for all or part of the cost of treatment. While assigned to a Department of Mental Health and Substance Abuse Services treatment program the inmate shall comply with the rules and regulations as agreed upon by the Department of Mental Health and Substance Abuse Services and the Department of Corrections. Any infraction of said rules may result in the inmate's reassignment to a correctional facility of the Department of Corrections. Upon successful completion of the treatment program the inmate shall be properly reassigned by the Department of Corrections for the completion of the sentence imposed by the court. Prior to discharge from the treatment facility, the treatment facility shall forward to the Department of Corrections a report and discharge summary including arrangements and recommendations for further disposition and follow-up treatment; ~~or~~

2. To an inpatient substance abuse treatment program with the offender paying for the treatment. Upon successful completion of the inpatient treatment program, the offender may be assigned to a halfway house, structured community placement, or home placement with the advice of the treatment provider. The Department of Corrections shall require as a condition of any assignment that the offender have electronic monitoring or ignition interlock device requirements, or both, as a condition of placement. The offender shall be responsible for all costs and fees associated with electronic monitoring, ignition interlock device, and supervision; or

3. To a correctional facility when:

- a. the person is evaluated not to be receptive to treatment,
- b. the person is evaluated to be a security risk, or
- c. the person requires educational, medical or other services or programs not available in the community setting as determined by the Department.

B. As used in this section:

1. "Substance abuse treatment program" means a residential or outpatient program certified by the Department of Mental Health and Substance Abuse Services and selected by the Department of Corrections to provide substance abuse treatment for the inmate; ~~and~~

2. "Electronic monitoring" means monitoring of the inmate within a specified location or locations in a community setting by means of an electronic bracelet or other device; and

3. "Ignition interlock device" means a device that, without tampering or intervention by another person, would prevent the defendant from operating a motor vehicle if the defendant has a blood or breath alcohol concentration of five-hundredths (0.05) or greater.

SECTION 4. This act shall become effective November 1, 1999.

Passed the House of Representatives the 17th day of May, 1999.

Speaker of the House of
Representatives

Passed the Senate the 18th day of May, 1999.

President of the Senate