

CS for EHB 1395

1 THE STATE SENATE  
2 Monday, April 11, 2005

3 Committee Substitute for  
4 ENGROSSED  
5 House Bill No. 1395

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1395 - By: ELLIS  
7 of the House and CORN of the Senate.

8 An Act relating to motor vehicles; amending 47 O.S. 2001,  
9 Sections 11-902, as last amended by Section 54 of Enrolled  
10 House Bill No. 2060 of the 1st Session of the 50th Oklahoma  
11 Legislature, and 751, as last amended by Section 58 of  
12 Enrolled House Bill No. 2060 of the 1st Session of the 50th  
13 Oklahoma Legislature, which relate to persons under the  
14 influence of alcohol or other intoxicating substance and  
15 implied consent to breath and blood testing; modifying  
16 certain treatment requirements; requiring law enforcement  
17 officer to provide certain information; and providing an  
18 effective date.

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

20 SECTION 1. AMENDATORY 47 O.S. 2001, Section 11-902, as  
21 last amended by Section 54 of Enrolled House Bill No. 2060 of the  
22 1st Session of the 50th Oklahoma Legislature, is amended to read as  
23 follows:

24 Section 11-902. A. It is unlawful and punishable as provided  
25 in this section for any person to drive, operate, or be in actual  
26 physical control of a motor vehicle within this state, whether upon  
27 public roads, highways, streets, turnpikes, other public places or  
28 upon any private road, street, alley or lane which provides access  
29 to one or more single or multi-family dwellings, who:

1           1. Has a blood or breath alcohol concentration, as defined in  
2 Section 756 of this title, of eight-hundredths (0.08) or more at the  
3 time of a test of such person's blood or breath administered within  
4 two (2) hours after the arrest of such person;

5           2. Is under the influence of alcohol;

6           3. Is under the influence of any intoxicating substance other  
7 than alcohol which may render such person incapable of safely  
8 driving or operating a motor vehicle; or

9           4. Is under the combined influence of alcohol and any other  
10 intoxicating substance which may render such person incapable of  
11 safely driving or operating a motor vehicle.

12           B. The fact that any person charged with a violation of this  
13 section is or has been lawfully entitled to use alcohol or a  
14 controlled dangerous substance or any other intoxicating substance  
15 shall not constitute a defense against any charge of violating this  
16 section.

17           C. 1. Any person who is convicted of a violation of the  
18 provisions of this section shall be deemed guilty of a misdemeanor  
19 for the first offense and shall participate in an assessment and  
20 evaluation by an assessment agency or assessment personnel certified  
21 by the Department of Mental Health and Substance Abuse Services  
22 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and  
23 shall follow all recommendations made in the assessment and

1 evaluation and be punished by imprisonment in jail for not less than  
2 ten (10) days nor more than one (1) year. Any person convicted of a  
3 violation for a first offense shall be fined not more than One  
4 Thousand Dollars (\$1,000.00).

5 2. Any person who, within ten (10) years after a previous  
6 conviction of a violation of this section or a violation pursuant to  
7 the provisions of any law of another state prohibiting the offense  
8 provided in subsection A of this section, is convicted of a second  
9 offense pursuant to the provisions of this section or has a prior  
10 conviction in a municipal criminal court of record for the violation  
11 of a municipal ordinance prohibiting the offense provided for in  
12 subsection A of this section and within ten (10) years of such  
13 municipal conviction is convicted pursuant to the provision of this  
14 section shall be deemed guilty of a felony and shall participate in  
15 an assessment and evaluation by an assessment agency or assessment  
16 personnel certified by the Department of Mental Health and Substance  
17 Abuse Services pursuant to Section 3-460 of Title 43A of the  
18 Oklahoma Statutes and shall be sentenced to:

19 a. follow all recommendations made in the assessment and  
20 evaluation ~~with a minimum of twenty-eight (28) days of~~  
21 for treatment followed by ~~thirty (30) days of~~  
22 ~~aftercare~~ at the defendant's expense, or

- 1           b.    placement in the custody of the Department of  
2                    Corrections for not less than one (1) year and not to  
3                    exceed five (5) years and a fine of not more than Two  
4                    Thousand Five Hundred Dollars (\$2,500.00), or  
5            c.    treatment, imprisonment and a fine within the  
6                    limitations prescribed in subparagraphs a and b of  
7                    this paragraph.

8            However, if the treatment in subparagraph a of this paragraph  
9            does not include residential or inpatient treatment for a period of  
10           not less than five (5) days, the person shall serve a term of  
11           imprisonment of at least five (5) days.

12           3.    Any person who is convicted of a second felony offense  
13           pursuant to the provisions of this section shall participate in an  
14           assessment and evaluation by an assessment agency or assessment  
15           personnel certified by the Department of Mental Health and Substance  
16           Abuse Services pursuant to Section 3-460 of Title 43A of the  
17           Oklahoma Statutes and shall be sentenced to:

- 18           a.    follow all recommendations made in the assessment and  
19                    evaluation for treatment at the defendant's expense  
20                    ~~with a minimum of twenty-eight (28) days of~~  
21                    ~~residential or inpatient treatment followed by ninety~~  
22                    ~~(90) days of aftercare at the defendant's expense, two~~  
23                    hundred forty (240) hours of community service

1                   ~~following the aftercare~~ and use of an ignition  
2                   interlock device, or

3                   b.    placement in the custody of the Department of  
4                   Corrections for not less than one (1) year and not to  
5                   exceed seven (7) years and a fine of not more than  
6                   Five Thousand Dollars (\$5,000.00), or

7                   c.    treatment, imprisonment and a fine within the  
8                   limitations prescribed in subparagraphs a and b of  
9                   this paragraph.

10                  However, if the treatment in subparagraph a of this paragraph  
11                  does not include residential or inpatient treatment for a period of  
12                  not less than ten (10) days, the person shall serve a term of  
13                  imprisonment of at least ten (10) days.

14                  4.    Any person who is convicted of a third or subsequent felony  
15                  offense pursuant to the provisions of this section shall participate  
16                  in an assessment and evaluation by an assessment agency or  
17                  assessment personnel certified by the Department of Mental Health  
18                  and Substance Abuse Services pursuant to Section 3-460 of Title 43A  
19                  of the Oklahoma Statutes and shall be sentenced to:

20                  a.    follow all recommendations made in the assessment and  
21                  evaluation for treatment at the defendant's expense  
22                  ~~with a minimum of twenty-eight (28) days residential~~  
23                  ~~or inpatient treatment,~~ followed by not less than one

1                   (1) year of supervision, and periodic testing, ~~and~~  
2                   ~~aftercare~~ at the defendant's expense, four hundred  
3                   eighty (480) hours of community service ~~following the~~  
4                   ~~period of aftercare~~, and use of an ignition interlock  
5                   device for a minimum of thirty (30) days, or  
6                   b.    placement in the custody of the Department of  
7                   Corrections for not less than one (1) year and not to  
8                   exceed ten (10) years and a fine of not more than Five  
9                   Thousand Dollars (\$5,000.00), or  
10                  c.    treatment, imprisonment and a fine within the  
11                  limitations prescribed in subparagraphs a and b of  
12                  this paragraph.

13                  However, if the person does not undergo residential or inpatient  
14                  treatment pursuant to subparagraph a of this paragraph the person  
15                  shall serve a term of imprisonment of at least ten (10) days.

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

22                  6.    Provided, however, a conviction from another state shall not  
23                  be used to enhance punishment pursuant to the provisions of this

1 subsection if that conviction is based on a blood or breath alcohol  
2 concentration of less than eight-hundredths (0.08).

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

10 D. Any person who is convicted of a violation of driving under  
11 the influence with a blood or breath alcohol concentration of  
12 fifteen-hundredths (0.15) or more pursuant to this section shall be  
13 deemed guilty of aggravated driving under the influence. A person  
14 convicted of aggravated driving under the influence shall  
15 participate in an assessment and evaluation by an assessment agency  
16 or assessment personnel certified by the Department of Mental Health  
17 and Substance Abuse Services pursuant to Section 3-460 of Title 43A  
18 of the Oklahoma Statutes and shall comply with all recommendations  
19 and for treatment. Such person shall be ~~punished by mandatory~~  
20 ~~residential or inpatient treatment for a minimum of twenty-eight~~  
21 ~~(28) days followed by~~ sentenced to not less than one (1) year of  
22 supervision, and periodic testing, ~~and aftercare~~ at the defendant's  
23 expense, four hundred eighty (480) hours of community service

1 ~~following the period of aftercare,~~ and an ignition interlock device  
2 for a minimum of thirty (30) days. Nothing in this subsection shall  
3 preclude the defendant from being charged or punished as provided in  
4 paragraph 1, 2, 3, 4 or 5 of subsection C of this section.

5 E. When a person is sentenced to imprisonment in the custody of  
6 the Department of Corrections, the person shall be processed through  
7 the Lexington Assessment and Reception Center or at a place  
8 determined by the Director of the Department of Corrections. The  
9 Department of Corrections shall classify and assign the person to  
10 one or more of the following:

11 1. The Department of Mental Health and Substance Abuse Services  
12 pursuant to paragraph 1 of subsection A of Section 612 of Title 57  
13 of the Oklahoma Statutes; or

14 2. A correctional facility operated by the Department of  
15 Corrections with assignment to substance abuse treatment.

16 F. The Department of Public Safety is hereby authorized to  
17 reinstate any suspended or revoked driving privilege when the person  
18 meets the statutory requirements which affect the existing driving  
19 privilege.

20 G. Any person who is found guilty of a violation of the  
21 provisions of this section shall be ordered to participate in, prior  
22 to sentencing, an alcohol and drug substance abuse evaluation and  
23 assessment program offered by a certified assessment agency or

1 certified assessor for the purpose of evaluating and assessing the  
2 receptivity to treatment and prognosis of the person. The court  
3 shall order the person to reimburse the agency or assessor for the  
4 evaluation and assessment. The fee for an evaluation and assessment  
5 shall be the amount provided in subsection C of Section 3-460 of  
6 Title 43A of the Oklahoma Statutes. The evaluation and assessment  
7 shall be conducted at a certified assessment agency, the office of a  
8 certified assessor or at another location as ordered by the court.  
9 The agency or assessor shall, within seventy-two (72) hours from the  
10 time the person is evaluated and assessed, submit a written report  
11 to the court for the purpose of assisting the court in its final  
12 sentencing determination. If such report indicates that the  
13 evaluation and assessment shows that the defendant would benefit  
14 from a ten-hour or twenty-four-hour alcohol and drug substance abuse  
15 course or a treatment program or both, the court shall, as a  
16 condition of any sentence imposed, including deferred and suspended  
17 sentences, require the person to follow all recommendations  
18 identified by the evaluation and assessment and ordered by the  
19 court. No person, agency or facility operating an evaluation and  
20 assessment program certified by the Department of Mental Health and  
21 Substance Abuse Services shall solicit or refer any person evaluated  
22 and assessed pursuant to this section for any treatment program or  
23 substance abuse service in which such person, agency or facility has

1 a vested interest; however, this provision shall not be construed to  
2 prohibit the court from ordering participation in or any person from  
3 voluntarily utilizing a treatment program or substance abuse service  
4 offered by such person, agency or facility. If a person is  
5 sentenced to imprisonment in the custody of the Department of  
6 Corrections and the court has received a written evaluation report  
7 pursuant to the provisions of this subsection, the report shall be  
8 furnished to the Department of Corrections with the judgment and  
9 sentence. Any evaluation and assessment report submitted to the  
10 court pursuant to the provisions of this subsection shall be handled  
11 in a manner which will keep such report confidential from the  
12 general public's review. Nothing contained in this subsection shall  
13 be construed to prohibit the court from ordering judgment and  
14 sentence in the event the defendant fails or refuses to comply with  
15 an order of the court to obtain the evaluation and assessment  
16 required by this subsection. If the defendant fails or refuses to  
17 comply with an order of the court to obtain the evaluation and  
18 assessment, the Department of Public Safety shall not reinstate  
19 driving privileges until the defendant has complied in full with  
20 such order. Nothing contained in this subsection shall be construed  
21 to prohibit the court from ordering judgment and sentence and any  
22 other sanction authorized by law for failure or refusal to comply  
23 with an order of the court.

1           H. Any person who is found guilty of a violation of the  
2 provisions of this section may be required by the court to attend a  
3 victims impact panel program, if such a program is offered in the  
4 county where the judgment is rendered, and to pay a fee, not less  
5 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars  
6 (\$25.00) as set by the governing authority of the program and  
7 approved by the court, to the program to offset the cost of  
8 participation by the defendant, if in the opinion of the court the  
9 defendant has the ability to pay such fee.

10           I. Any person who is found guilty of a second or subsequent  
11 violation of the provisions of this section, shall be ordered by the  
12 court to have installed, after the conclusion of the mandatory  
13 revocation period pursuant to Section 6-205.1 of this title, on  
14 every motor vehicle owned by the person and on the vehicle regularly  
15 operated by the person, if such vehicle is not owned by the person  
16 pursuant to Sections 754.1 and 755 of this title, an ignition  
17 interlock device approved by the Board of Tests for Alcohol and Drug  
18 Influence at the person's own expense for a period of not less than  
19 six (6) months nor more than three (3) years. The person shall pay  
20 the monthly maintenance fee for each ignition interlock device  
21 installed pursuant to this subsection. The installation of an  
22 ignition interlock device, as required by this subsection, shall not

1 be construed to authorize the person to drive unless the person is  
2 otherwise eligible to drive.

3 J. Any person who is found guilty of a felony violation of the  
4 provisions of this section may be required to submit to electronic  
5 monitoring as authorized and defined by Section 991a of Title 22 of  
6 the Oklahoma Statutes.

7 K. Any person who, within ten (10) years after a previous  
8 conviction of a violation of this section or a violation pursuant to  
9 the provisions of law of another state prohibiting the offense  
10 provided in subsection A of this section or a violation of a  
11 municipal ordinance prohibiting the offense provided in subsection A  
12 of this section, pleads guilty or nolo contendere or is convicted of  
13 a violation of this section shall not be required to undergo the  
14 alcohol and drug substance evaluation program required by subsection  
15 G of this section. The court shall, as a condition of any sentence  
16 imposed, including deferred and suspended sentences, require the  
17 person to participate in and successfully complete all  
18 recommendations from the evaluation, such as an alcohol and drug  
19 substance abuse treatment program pursuant to Section 3-452 of Title  
20 43A of the Oklahoma Statutes.

21 L. Any person who is found guilty of a violation of the  
22 provisions of this section who has been sentenced by the court to

1 perform any type of community service shall not be permitted to pay  
2 a fine in lieu of performing the community service.

3 M. When a person is found guilty of a violation of the  
4 provisions of this section, the court shall order, in addition to  
5 any other penalty, the defendant to pay a one-hundred-dollar  
6 assessment to be deposited in the Drug Abuse Education and Treatment  
7 Revolving Fund created in Section 2-503.2 of Title 63 of the  
8 Oklahoma Statutes, upon collection.

9 N. In any case in which a person is convicted of violating the  
10 provisions of this section and who was transporting in the motor  
11 vehicle a child fifteen (15) years of age or younger, the fine shall  
12 be enhanced to double the amount of the whole sum otherwise  
13 prescribed.

14 SECTION 2. AMENDATORY 47 O.S. 2001, Section 751, as last  
15 amended by Section 58 of Enrolled House Bill No. 2060 of the 1st  
16 Session of the 50th Oklahoma Legislature, is amended to read as  
17 follows:

18 Section 751. A. 1. Any person who operates a motor vehicle  
19 upon the public roads, highways, streets, turnpikes or other public  
20 place or upon any private road, street, alley or lane which provides  
21 access to one or more single or multi-family dwellings within this  
22 state shall be deemed to have given consent to a test or tests of  
23 such person's blood or breath, for the purpose of determining the

1 alcohol concentration as defined in Section 756 of this title, and  
2 such person's blood, saliva or urine for determining the presence  
3 and concentration of any other intoxicating substance therein as  
4 defined in this section, if arrested for any offense arising out of  
5 acts alleged to have been committed while the person was operating  
6 or in actual physical control of a motor vehicle upon the public  
7 roads, highways, streets, turnpikes or other public place or upon  
8 any private road, street, alley or lane which provides access to one  
9 or more single or multi-family dwellings while under the influence  
10 of alcohol or other intoxicating substance, or the combined  
11 influence of alcohol and any other intoxicating substance, or if the  
12 person is involved in a traffic accident that resulted in the  
13 immediate death or serious injury of any person and is removed from  
14 the scene of the accident to a hospital or other health care  
15 facility outside the State of Oklahoma before a law enforcement  
16 officer can effect an arrest.

17 2. A law enforcement officer, having reasonable grounds to  
18 believe that such person was operating or in actual physical control  
19 of a motor vehicle while under the influence may direct the  
20 administration of or administer the test or tests.

21 As used in this title, the term "other intoxicating substance"  
22 shall mean any controlled dangerous substance as defined in the  
23 Uniform Controlled Dangerous Substances Act and any other substance,

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

5 B. The law enforcement agency by which the arresting officer is  
6 employed may designate, in accordance with the rules of the Board of  
7 Tests for Alcohol and Drug Influence, hereinafter referred to as the  
8 Board, whether blood or breath is to be tested for the alcohol  
9 concentration thereof, and whether blood, saliva or urine is to be  
10 tested for the presence and concentration of any other intoxicating  
11 substance therein.

12 In the event the law enforcement agency does not designate the  
13 test to be administered, breath shall be the substance tested for  
14 alcohol concentration. Blood may also be tested to determine the  
15 alcohol concentration thereof in the event that breath cannot be  
16 tested to determine the alcohol concentration thereof because of the  
17 lack of an approved device or qualified person to administer a  
18 breath test or because such breath test for any other reason cannot  
19 be administered in accordance with the rules of the Board.

20 In the event the law enforcement agency does not designate the  
21 test to be administered, blood, saliva or urine shall be the  
22 substance tested for the presence and concentration of any other

1 intoxicating substance or the combination of alcohol and any other  
2 intoxicating substance.

3 C. In the event the person is incapable of submitting to and  
4 successfully completing, by reason of illness or injury or other  
5 physical disability, the test to be administered, an alternate test  
6 may be administered in accordance with the rules of the Board.

7 D. Any person who is unconscious or otherwise incapable of  
8 refusing to submit to a test of such person's blood or breath to  
9 determine the alcohol concentration thereof, or to a test of such  
10 person's blood, saliva or urine to determine the presence and  
11 concentration of any other intoxicating substance therein, shall be  
12 deemed not to have withdrawn the consent provided by subsection A of  
13 this section, and such test may be administered as provided herein.

14 An unconscious person who has been issued a citation by a law  
15 enforcement officer for one of the offenses listed in subsection A  
16 of this section is arrested for purposes of this section. The  
17 arresting officer must leave a copy of the citation with the  
18 arrested person which may be accomplished by handing it to the  
19 arrested person, or by leaving it with the personal effects of the  
20 arrested party, so as to inform the unconscious person of the  
21 arrest.

22 Any person who has been arrested for one of the offenses listed  
23 in subsection A of this section who is unconscious or injured and

1 who requires immediate medical treatment as determined by a treating  
2 physician may be released on the person's own recognizance for  
3 medical reasons by the arresting officer. The arresting officer who  
4 releases an arrested person on the person's own recognizance must  
5 indicate the release on the face of the citation. Any person  
6 released on his or her own recognizance for medical reasons shall  
7 remain at liberty pending the filing of charges.

8 E. In addition to any test designated by the arresting officer,  
9 the arrested person may also designate any additional test to be  
10 administered to determine the concentration of alcohol, any other  
11 intoxicating substance or the combination of alcohol and any other  
12 intoxicating substance. The cost of such additional test shall be  
13 at the expense of the arrested person.

14 A sufficient quantity of any specimen obtained at the  
15 designation of the arrested person shall be available to the law  
16 enforcement agency employing the arresting officer. Such specimens  
17 shall be treated in accordance with the rules applicable to the  
18 specimens obtained by an arresting officer.

19 F. When a law enforcement officer has determined that the blood  
20 alcohol content of an individual is to be tested for the presence  
21 and concentration of alcohol, other intoxicating substance, or the  
22 combination of alcohol and any other intoxicating substance, the law  
23 enforcement officer shall inform the individual to be tested that

1 the withdrawal of blood shall only be performed by certain medical  
2 personnel as provided for in Section 752 of this title.

3 SECTION 3. This act shall become effective November 1, 2005.

4 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-5-05 - DO PASS,  
5 As Amended.