

SENATE CHAMBER

STATE OF OKLAHOMA

DISPOSITION BY SENATE

FLOOR AMENDMENT

No. _____

(Date)

Mr./Madame President:

I move to amend House Bill No. 3076, as follows:

Page 6, Line 13 1/2, by inserting a new SECTION 3 to read as per attached and by renumbering subsequent sections;

Page 10, Line 10 1/2, by inserting a new SECTION 5 to read as per attached and by renumbering subsequent sections; and

By amending the title to conform.

Submitted by:

Senator Brown

Brown-LTL-FA-HB3076

4/8/2008 5:27 PM

1 SECTION 3. AMENDATORY 63 O.S. 2001, Section 4210A, as renumbered by Section
2 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp. 2007, Section 4210.8), is amended to read as follows:

3 Section 4210.8 A. It shall be unlawful for any person to operate or be in actual physical
4 control of a vessel upon the waters of this state, except privately owned waters, who:

1 1. Has a blood or breath alcohol concentration of ~~ten-hundredths (0.10)~~ eight-hundredths
2 (0.08) or more at the time of a test of the person's blood or breath;

3 2. Is under the influence of any other intoxicating substance to a degree which renders such
4 person incapable of safely operating a vessel upon the waters of this state; or

5 3. Is under the influence of alcohol and any other intoxicating substance to a degree which
6 renders such person incapable of safely operating a vessel upon the waters of this state.

7 As used in this section, the term "other intoxicating substance" shall mean any controlled dangerous
8 substance as defined in the Uniform Controlled Dangerous Substances Act or any other substance,
9 other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human
10 body and is capable of adversely affecting the central nervous system, vision, hearing or other
11 sensory or motor functions.

12 B. 1. Any person operating a vessel upon the waters of this state, except privately owned
13 waters, shall be deemed to have given consent to a test or tests of such person's blood, breath, saliva
14 or urine for the purpose of determining the presence and concentration of alcohol or any other
15 intoxicating substance. Such tests shall be performed within two (2) hours of an arrest and in the
16 same manner as provided for in Section 752 of Title 47 of the Oklahoma Statutes.

17 2. Evidence that the person has refused to submit to a test or tests as required by this section
18 shall be admissible upon the trial of any criminal action or proceeding arising out of acts alleged to
19 have been committed in violation of the provisions of this section.

20 3. Any person refusing to submit to such test or tests shall be in violation of this section and
21 subject to the fines provided for herein.

22 C. 1. Any person convicted of a violation of this section shall be guilty of a misdemeanor and
23 fined in an amount not to exceed ~~One Thousand Dollars (\$1,000.00)~~. ~~Any second or subsequent~~
24 ~~conviction shall be punishable by a fine in an amount of not less than One Thousand Dollars~~
25 ~~(\$1,000.00), nor more than Two Thousand Five Hundred Dollars (\$2,500.00).~~

1 2. A person arrested by a law enforcement officer for a violation of this section may be
2 allowed to post a cash bail in an amount set by the arresting law enforcement officer not to exceed
3 the maximum fine provided by this section, or deposit a valid license to operate a motor vehicle in
4 exchange for an official receipt issued by the arresting officer as provided for in Section 1111 et seq.
5 of Title 22 of the Oklahoma Statutes.

6 D. Any conviction for a violation of this section shall be recorded to the driving record of the
7 convicted person, if such record exists, and such violation shall be utilized when assessing penalties
8 for subsequent violations of Section 11-902 of Title 47 of the Oklahoma Statutes.

9
10 SECTION 5. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section
11 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2007, Section 11-902), is amended to read as follows:

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

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

19 2. Is under the influence of alcohol;

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

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

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

4 C. 1. Any person who is convicted of a violation of the provisions of this section shall be
5 deemed guilty of a misdemeanor for the first offense and shall participate in an assessment and
6 evaluation by an assessment agency or assessment personnel certified by the Department of Mental
7 Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma
8 Statutes and shall follow all recommendations made in the assessment and evaluation and be
9 punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year. Any
10 person convicted of a violation for a first offense shall be fined not more than One Thousand Dollars
11 (\$1,000.00).

12 2. Any person who, within ten (10) years after a previous conviction of a violation of this
13 section, a conviction of a violation of subsection A of Section 4210.8 of Title 63 of the Oklahoma
14 Statutes, or a violation pursuant to the provisions of any law of another state prohibiting the ~~offense~~
15 ~~offenses~~ provided in subsection A of this section or in subsection A of Section 4210.8 of Title 63 of
16 the Oklahoma Statutes, is convicted of a second offense pursuant to the provisions of this section or
17 has a prior conviction in a municipal criminal court of record for the violation of a municipal
18 ordinance prohibiting the ~~offense~~ offenses provided for in subsection A of this section or in
19 subsection A of Section 4210.8 of Title 63 of the Oklahoma Statutes, and within ten (10) years of
20 such municipal conviction is convicted pursuant to the provision of this section shall be deemed
21 guilty of a felony and shall participate in an assessment and evaluation by an assessment agency or
22 assessment personnel certified by the Department of Mental Health and Substance Abuse Services
23 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

24 a. follow all recommendations made in the assessment and evaluation for
25 treatment at the defendant's expense, or

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

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

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

- 13 a. follow all recommendations made in the assessment and evaluation for
14 treatment at the defendant's expense, two hundred forty (240) hours of
15 community service and use of an ignition interlock device, or
16 b. placement in the custody of the Department of Corrections for not less than one
17 (1) year and not to exceed seven (7) years and a fine of not more than Five
18 Thousand Dollars (\$5,000.00), or
19 c. treatment, imprisonment and a fine within the limitations prescribed in
20 subparagraphs a and b of this paragraph.

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

24 4. Any person who is convicted of a third or subsequent felony offense pursuant to the
25 provisions of this section shall participate in an assessment and evaluation by an assessment agency

1 or assessment personnel certified by the Department of Mental Health and Substance Abuse
2 Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

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

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

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

20 6. Provided, however, a conviction from another state shall not be used to enhance
21 punishment pursuant to the provisions of this subsection if that conviction is based on a blood or
22 breath alcohol concentration of less than eight-hundredths (0.08) .

23 7. In any case in which a defendant is charged with a second or subsequent driving under the
24 influence of alcohol or other intoxicating substance offense within any municipality with a

1 municipal court other than a court of record, the charge shall be presented to the county's district
2 attorney and filed with the district court of the county within which the municipality is located.

3 8. In any case in which a defendant is charged with a violation of subsection A of Section
4 4210.8 of Title 63 of the Oklahoma Statutes subsequent to a driving under the influence of alcohol
5 or other intoxicating substance offense within any municipality with a municipal court other than a
6 court of record, the charge shall be presented to the county's district attorney and filed with the
7 district court of the county within which the municipality is located.

8 D. Any person who is convicted of a violation of driving under the influence with a blood or
9 breath alcohol concentration of fifteen-hundredths (0.15) or more pursuant to this section shall be
10 deemed guilty of aggravated driving under the influence. A person convicted of aggravated driving
11 under the influence shall participate in an assessment and evaluation by an assessment agency or
12 assessment personnel certified by the Department of Mental Health and Substance Abuse Services
13 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall comply with all
14 recommendations for treatment. Such person shall be sentenced to not less than one (1) year of
15 supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of
16 community service, and an ignition interlock device for a minimum of thirty (30) days. Nothing in
17 this subsection shall preclude the defendant from being charged or punished as provided in
18 paragraph 1, 2, 3, 4 or 5 of subsection C of this section.

19 E. When a person is sentenced to imprisonment in the custody of the Department of
20 Corrections, the person shall be processed through the Lexington Assessment and Reception Center
21 or at a place determined by the Director of the Department of Corrections. The Department of
22 Corrections shall classify and assign the person to one or more of the following:

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

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

3 F. The Department of Public Safety is hereby authorized to reinstate any suspended or
4 revoked driving privilege when the person meets the statutory requirements which affect the existing
5 driving privilege.

6 G. Any person who is found guilty of a violation of the provisions of this section shall be
7 ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation and
8 assessment program offered by a certified assessment agency or certified assessor for the purpose of
9 evaluating and assessing the receptivity to treatment and prognosis of the person. The court shall
10 order the person to reimburse the agency or assessor for the evaluation and assessment. The fee for
11 an evaluation and assessment shall be the amount provided in subsection C of Section 3-460 of Title
12 43A of the Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified
13 assessment agency, the office of a certified assessor or at another location as ordered by the court.
14 The agency or assessor shall, within seventy-two (72) hours from the time the person is evaluated
15 and assessed, submit a written report to the court for the purpose of assisting the court in its final
16 sentencing determination. If such report indicates that the evaluation and assessment shows that the
17 defendant would benefit from a ten-hour or twenty-four-hour alcohol and drug substance abuse
18 course or a treatment program or both, the court shall, as a condition of any sentence imposed,
19 including deferred and suspended sentences, require the person to follow all recommendations
20 identified by the evaluation and assessment and ordered by the court. No person, agency or facility
21 operating an evaluation and assessment program certified by the Department of Mental Health and
22 Substance Abuse Services shall solicit or refer any person evaluated and assessed pursuant to this
23 section for any treatment program or substance abuse service in which such person, agency or
24 facility has a vested interest; however, this provision shall not be construed to prohibit the court
25 from ordering participation in or any person from voluntarily utilizing a treatment program or

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

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

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

23 J. Any person who, within ten (10) years after a previous conviction of a violation of this
24 section, a violation of subsection A of Section 4210.8 of Title 63 of the Oklahoma Statutes, or a
25 violation pursuant to the provisions of law of another state prohibiting the ~~offense~~ offenses provided

1 in subsection A of this section or in subsection A of Section 4210.8 of Title 63 of the Oklahoma
2 Statutes, or a violation of a municipal ordinance prohibiting the ~~offense~~ offenses provided in
3 subsection A of this section or in subsection A of Section 4210.8 of Title 63 of the Oklahoma
4 Statutes, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be
5 required to undergo the alcohol and drug substance evaluation program required by subsection G of
6 this section. The court shall, as a condition of any sentence imposed, including deferred and
7 suspended sentences, require the person to participate in and successfully complete all
8 recommendations from the evaluation, such as an alcohol and drug substance abuse treatment
9 program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

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

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

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

20