

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 170

By: Wyrick

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Section 4210A, as renumbered by Section  
9 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp. 2006,  
10 Section 4210.8), which relates to operation of a  
11 vessel under the influence of alcohol or other  
12 intoxicating substances; adding reference to  
13 penalties; modifying maximum allowable blood or  
14 breath alcohol concentration; expanding conditions of  
15 violation; prohibiting certain legal entitlement as a  
16 defense against violation; directing certain  
17 assessment and evaluation for first offense;  
18 prescribing additional penalty for first offense;  
19 defining second offense as felony; directing certain  
20 assessment and evaluation for second offense;  
21 prescribing sentencing for second offense; directing  
22 certain assessment and evaluation for second felony  
23 offense; prescribing sentencing for second felony  
24 offense; directing certain assessment and evaluation  
for subsequent felony offense; prescribing sentencing  
for subsequent felony offense; establishing felony  
for subsequent conviction of certain murder or  
manslaughter charges; providing exception for certain  
convictions from another state; directing certain  
municipal offenses to be presented to county district  
attorney and filed with county district court;  
establishing certain blood or breath alcohol  
concentration as aggravated offense; directing  
certain assessment and evaluation for aggravated  
offense; prescribing sentencing for aggravated  
offense; instructing Department of Corrections on  
processing persons sentenced to imprisonment;  
specifying certain facilities for persons sentenced  
to imprisonment; authorizing Department of Public  
Safety to reinstate certain privilege under specific  
conditions; requiring certain assessment and

1 evaluation prior to sentencing; directing certain  
2 reimbursement for certain assessment and evaluation;  
3 specifying fee for certain assessment and evaluation;  
4 establishing place for certain assessment and  
5 evaluation; directing agency or assessor to submit  
6 certain report to court within a specified time;  
7 requiring court to include recommendations of certain  
8 report in sentencing; prohibiting solicitation from  
9 or referral to programs or services in which an  
10 assessor, agency, or facility has a vested interest;  
11 allowing voluntary use of certain programs or  
12 services; directing furnishing of certain report to  
13 Department of Corrections; mandating confidentiality  
14 of certain report; allowing court to judge and  
15 sentence offenders who refuse certain assessment and  
16 evaluation; directing Department of Public Safety to  
17 withhold certain privilege under certain condition;  
18 allowing court to judge and sentence offenders  
19 refusing to comply with court orders; allowing court  
20 to require attendance in certain program; prescribing  
21 fee for certain attendance; authorizing electronic  
22 monitoring of felony offenders; providing condition  
23 under which certain offenders are not required to  
24 undergo certain assessment and evaluation;  
instructing court to include evaluation  
recommendations in sentencing certain offenders;  
prohibiting fine in lieu of community service;  
instructing court to require certain assessment fee;  
directing fee deposit; requiring certain fine  
increase for specific violation; and providing an  
effective date.

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

20 SECTION 1. AMENDATORY 63 O.S. 2001, Section 4210A, as  
21 renumbered by Section 9, Chapter 393, O.S.L. 2003 (63 O.S. Supp.  
22 2006, Section 4210.8), is amended to read as follows:

23 Section 4210.8 A. It shall be unlawful and punishable as  
24 provided in this section for any person to operate or be in actual

1 physical control of a vessel upon the waters of this state, except  
2 privately owned waters, who:

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

6 2. Is under the influence of alcohol;

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

10 ~~3.~~ 4. Is under the influence of alcohol and any other  
11 intoxicating substance to a degree which renders such person  
12 incapable of safely operating a vessel upon the waters of this  
13 state.

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

21 B. The fact that any person charged with a violation of this  
22 section is or has been lawfully entitled to use alcohol or a  
23 controlled dangerous substance or any other intoxicating substance  
24

1 shall not constitute a defense against any charge of violating this  
2 section.

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

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

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

17 ~~C.~~ D. 1. Any person convicted of a violation of this section  
18 shall be guilty of a misdemeanor for the first offense and shall  
19 participate in an assessment and evaluation by an assessment agency  
20 or assessment personnel certified by the Department of Mental Health  
21 and Substance Abuse Services pursuant to Section 3-460 of Title 43A  
22 of the Oklahoma Statutes and shall follow all recommendations made  
23 in the assessment and evaluation and be punished by imprisonment in  
24 jail for not less than ten (10) days nor more than one (1) year and

1 fined in an amount not to exceed One Thousand Dollars (\$1,000.00).

2 ~~Any second or subsequent conviction shall be punishable by a fine in~~  
3 ~~an amount of not less than One Thousand Dollars (\$1,000.00), nor~~  
4 ~~more than Two Thousand Five Hundred Dollars (\$2,500.00).~~

5 2. ~~A person arrested by a law enforcement officer for a~~  
6 ~~violation of this section may be allowed to post a cash bail in an~~  
7 ~~amount set by the arresting law enforcement officer not to exceed~~  
8 ~~the maximum fine provided by this section, or deposit a valid~~  
9 ~~license to operate a motor vehicle in exchange for an official~~  
10 ~~receipt issued by the arresting officer as provided for in Section~~  
11 ~~1111 et seq. of Title 22 of the Oklahoma Statutes~~ Any person who,  
12 within ten (10) years after a previous conviction of a violation of  
13 this section or a violation pursuant to the provisions of any law of  
14 another state prohibiting the offense provided in subsection A of  
15 this section, is convicted of a second offense pursuant to the  
16 provisions of this section or has a prior conviction in a municipal  
17 criminal court of record for the violation of a municipal ordinance  
18 prohibiting the offense provided for in subsection A of this section  
19 and within ten (10) years of such municipal conviction is convicted  
20 pursuant to the provision of this section shall be deemed guilty of  
21 a felony and shall participate in an assessment and evaluation by an  
22 assessment agency or assessment personnel certified by the  
23 Department of Mental Health and Substance Abuse Services pursuant to  
24

1 Section 3-460 of Title 43A of the Oklahoma Statutes and shall be  
2 sentenced to:

3 a. follow all recommendations made in the assessment and  
4 evaluation for treatment at the defendant's expense,  
5 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 five (5) years and a fine of not more than Two  
9 Thousand Five Hundred Dollars (\$2,500.00), 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 treatment in subparagraph a of this paragraph  
14 does not include residential or inpatient treatment for a period of  
15 not less than five (5) days, the person shall serve a term of  
16 imprisonment of at least five (5) days.

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

- 1        a. follow all recommendations made in the assessment and  
2        evaluation for treatment at the defendant's expense,  
3        two hundred forty (240) hours of community service, or  
4        b. placement in the custody of the Department of  
5        Corrections for not less than one (1) year and not to  
6        exceed seven (7) years and a fine of not more than  
7        Five Thousand Dollars (\$5,000.00), or  
8        c. treatment, imprisonment and a fine within the  
9        limitations prescribed in subparagraphs a and b of  
10       this paragraph.

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

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

- 21       a. follow all recommendations made in the assessment and  
22       evaluation for treatment at the defendant's expense,  
23       followed by not less than one (1) year of supervision  
24       and periodic testing at the defendant's expense, four

1 hundred eighty (480) hours of community service, and  
2 shall be forbidden from operating a vessel upon the  
3 waters of this state, except privately owned waters,  
4 for a minimum of thirty (30) days, or

5 b. placement in the custody of the Department of  
6 Corrections for not less than one (1) year and not to  
7 exceed ten (10) years and a fine of not more than Five  
8 Thousand Dollars (\$5,000.00), or

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

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

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

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

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

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

1 F. When a person is sentenced to imprisonment in the custody of  
2 the Department of Corrections, the person shall be processed through  
3 the Lexington Assessment and Reception Center or at a place  
4 determined by the Director of the Department of Corrections. The  
5 Department of Corrections shall classify and assign the person to  
6 one or more of the following:

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

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

12 G. The Department of Public Safety is hereby authorized to  
13 reinstate any suspended or revoked privilege when the person meets  
14 the statutory requirements which affect the existing privilege to  
15 operate a vessel.

16 H. Any person who is found guilty of a violation of the  
17 provisions of this section shall be ordered to participate in, prior  
18 to sentencing, an alcohol and drug substance abuse evaluation and  
19 assessment program offered by a certified assessment agency or  
20 certified assessor for the purpose of evaluating and assessing the  
21 receptivity to treatment and prognosis of the person. The court  
22 shall order the person to reimburse the agency or assessor for the  
23 evaluation and assessment. The fee for an evaluation and assessment  
24 shall be the amount provided in subsection C of Section 3-460 of

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

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

18 I. Any person who is found guilty of a violation of the  
19 provisions of this section may be required by the court to attend a  
20 victims impact panel program, if such a program is offered in the  
21 county where the judgment is rendered, and to pay a fee, not less  
22 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars  
23 (\$25.00) as set by the governing authority of the program and  
24 approved by the court, to the program to offset the cost of

1 participation by the defendant, if in the opinion of the court the  
2 defendant has the ability to pay such fee.

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 H 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  
23 perform any type of community service shall not be permitted to pay  
24 a fine in lieu of performing the community service.

1        M. When a person is found guilty of a violation of the  
2 provisions of this section, the court shall order, in addition to  
3 any other penalty, the defendant to pay an assessment of One Hundred  
4 Dollars (\$100.00) to be deposited in the Drug Abuse Education and  
5 Treatment Revolving Fund created in Section 2-503.2 of this title,  
6 upon collection.

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

11        SECTION 2. This act shall become effective November 1, 2007.

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