

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 2291 By: Paddack of the Senate  
3 and  
4 Billy of the House  
5  
6

7 ( motor vehicles - driving under the influence -  
8 Department of Public Safety - courts of record -  
9 effective date )  
10  
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12 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
13 entire bill and insert

14 "( motor vehicles - driving under the influence -  
15 Department of Public Safety - courts of record -  
16 effective date )  
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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 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp.  
22 2009, Section 11-902), is amended to read as follows:

23 Section 11-902. A. It is unlawful and punishable as provided  
24 in this section for any person to drive, operate, or be in actual

1 physical control of a motor vehicle within this state, whether upon  
2 public roads, highways, streets, turnpikes, other public places or  
3 upon any private road, street, alley or lane which provides access  
4 to one or more single or multi-family dwellings, who:

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

9 2. Is under the influence of alcohol;

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

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

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

21 C. A record of conviction for any of the offenses provided in  
22 this section, or pursuant to any record of conviction for driving,  
23 operating or being in actual physical control of a motor vehicle  
24 while under the influence of alcohol or any other intoxicating

1 substance in a municipal court, shall be forwarded to the Department  
2 of Public Safety.

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

14 2. Any person who, within ten (10) years after a previous  
15 conviction of a violation of this section or a violation pursuant to  
16 the provisions of any law of another state prohibiting the offense  
17 provided in subsection A of this section, is convicted of a second  
18 offense pursuant to the provisions of this section or has a prior  
19 conviction in a municipal criminal court of record for the violation  
20 of a municipal ordinance prohibiting the offense provided for in  
21 subsection A of this section and within ten (10) years of such  
22 municipal conviction is convicted pursuant to the provision of this  
23 section shall be deemed guilty of a felony and shall participate in  
24 an assessment and evaluation by an assessment agency or assessment

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

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

7 b. placement in the custody of the Department of  
8 Corrections for not less than one (1) year and not to  
9 exceed five (5) years and a fine of not more than Two  
10 Thousand Five Hundred Dollars (\$2,500.00), or

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

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

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

24

- 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 and  
4 use of an ignition interlock device, 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 treatment in subparagraph a of this paragraph  
13 does not include residential or inpatient treatment for a period of  
14 not less than ten (10) days, the person shall serve a term of  
15 imprisonment of at least ten (10) days.

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

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

1 and periodic testing at the defendant's expense, four  
2 hundred eighty (480) hours of community service, and  
3 use of an ignition interlock device for a minimum of  
4 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 twenty (20) years and a fine of not more than  
8 Five 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 driving 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 driving under the influence of alcohol or other  
3 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, and the information shall be forwarded to the Department of  
8 Public Safety.

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

1       ~~E.~~ F. When a person is sentenced to imprisonment in the custody  
2 of the Department of Corrections, the person shall be processed  
3 through 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       ~~F.~~ G. The Department of Public Safety is hereby authorized to  
13 reinstate any suspended or revoked driving privilege when the person  
14 meets the statutory requirements which affect the existing driving  
15 privilege.

16       ~~G.~~ 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 driving privileges until the defendant has complied in full with  
14 such order. Nothing contained in this subsection shall be construed  
15 to prohibit the court from ordering judgment and sentence and any  
16 other sanction authorized by law for failure or refusal to comply  
17 with an order of the court.

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

7 ~~J.~~ 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~~ H of this section. The court shall, as a condition of any  
16 sentence imposed, including deferred and suspended sentences,  
17 require the 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 ~~K.~~ 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       ~~L.~~ 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 a one-hundred-dollar  
4 assessment to be deposited in the Drug Abuse Education and Treatment  
5 Revolving Fund created in Section 2-503.2 of Title 63 of the  
6 Oklahoma Statutes, upon collection.

7       ~~M.~~ N. 1. When a person is eighteen (18) years of age or older,  
8 and is the driver, operator, or person in physical control of a  
9 vehicle, and is convicted of violating any provision of this section  
10 while transporting or having in the motor vehicle any child less  
11 than eighteen (18) years of age, the fine shall be enhanced to  
12 double the amount of the fine imposed for the underlying driving  
13 under the influence (DUI) violation which shall be in addition to  
14 any other penalties allowed by this section.

15       2. Nothing in this subsection shall prohibit the prosecution of  
16 a person pursuant to Section 852.1 of Title 21 of the Oklahoma  
17 Statutes who is in violation of any provision of this section.

18       SECTION 2.        AMENDATORY        11 O.S. 2001, Section 27-101, is  
19 amended to read as follows:

20       Section 27-101. A. A municipality may create a Municipal  
21 Court, as provided in this article, which shall be a court not of  
22 record. This court may be created in addition to a Municipal  
23 Criminal Court of Record. References in Sections 27-101 through  
24 27-131 of this title to the municipal court shall mean the municipal

1 court not of record established under the authority of the  
2 provisions of this article.

3 B. All criminal courts not of record shall forward information  
4 regarding the conviction of a person driving under the influence of  
5 alcohol or other intoxicating substance, pursuant to Section 11-902  
6 of Title 47 of the Oklahoma Statutes, to the Department of Public  
7 Safety.

8 SECTION 3. AMENDATORY 11 O.S. 2001, Section 28-101, as  
9 amended by Section 2, Chapter 363, O.S.L. 2004 (11 O.S. Supp. 2009,  
10 Section 28-101), is amended to read as follows:

11 Section 28-101. A. In cities having a population of more than  
12 sixty-five thousand (65,000) inhabitants, as determined by the  
13 latest federal census, there is hereby created a "Municipal Criminal  
14 Court of Record of the City of \_\_\_\_\_", subject to the  
15 restrictions of subsection B of this section. References in  
16 Sections 28-101 through 28-128 of this title to the municipal  
17 criminal court of record shall mean the courts established by the  
18 provisions of this article in cities over sixty-five thousand  
19 (65,000) population.

20 B. Before a municipal criminal court of record not in existence  
21 before November 1, 2004, may be created, the municipal governing  
22 body shall determine by resolution that the efficient disposition of  
23 cases involving the violation of municipal ordinances necessitates  
24 creating a court of record. If such a resolution is not adopted,

1 the criminal court of the municipality shall remain a court not of  
2 record. The governing body shall cause a certified copy of the  
3 resolution to be filed in the office of the county clerk of each  
4 county in which the municipality is located. The resolution and the  
5 filing thereof shall be judicially noticed in all courts of this  
6 state. The provisions of this subsection shall not apply to any  
7 municipal criminal court of record created prior to November 1,  
8 2004, and such courts shall have all the powers and duties  
9 heretofore provided for such courts.

10 C. All municipal criminal courts of record shall forward  
11 information regarding the conviction of a person driving under the  
12 influence of alcohol or other intoxicating substance, pursuant to  
13 Section 11-902 of Title 47 of the Oklahoma Statutes, to the  
14 Department of Public Safety.

15 SECTION 4. This act shall become effective November 1, 2010.”  
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1 Passed the House of Representatives the 19th day of April, 2010.

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4 Presiding Officer of the House of  
Representatives  
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6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2010.

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9 Presiding Officer of the Senate  
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