

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1299

By: Jordan

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7 COMMITTEE SUBSTITUTE

8 An Act relating to motor vehicles; amending 47 O.S. 2001, Section 11-902, as
9 last amended by Section 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2008,
10 Section 11-902), which relates to driving under the influence of alcohol or other
11 intoxicating substance; modifying scope of certain criminal offense; deleting
12 certain time limitation; and providing an effective date.

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

14 SECTION 1. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section
15 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2008, Section 11-902), is amended to read as follows:

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

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

23 2. Is under the influence of alcohol;

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

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

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

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

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

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

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

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

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

- 1 c. treatment, imprisonment and a fine within the limitations prescribed in
2 subparagraphs a and b of this paragraph.

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

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

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

20 However, if the person does not undergo residential or inpatient treatment pursuant to
21 subparagraph a of this paragraph the person shall serve a term of imprisonment of at least ten (10)
22 days.
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1 5. Any person who, ~~within ten (10) years~~ after a previous conviction of a violation of murder in
2 the second degree or manslaughter in the first degree in which the death was caused as a result of
3 driving while impaired or under the influence of alcohol or other intoxicating substance or after a
4 previous conviction for an offense as provided in Section 11-904 of this title, is convicted of a
5 violation of this section shall be deemed guilty of a felony.

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

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

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

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

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

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

12 G. Any person who is found guilty of a violation of the provisions of this section shall be
13 ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation and
14 assessment program offered by a certified assessment agency or certified assessor for the purpose of
15 evaluating and assessing the receptivity to treatment and prognosis of the person. The court shall order
16 the person to reimburse the agency or assessor for the evaluation and assessment. The fee for an
17 evaluation and assessment shall be the amount provided in subsection C of Section 3-460 of Title 43A
18 of the Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified assessment
19 agency, the office of a certified assessor or at another location as ordered by the court. The agency or
20 assessor shall, within seventy-two (72) hours from the time the person is evaluated and assessed,
21 submit a written report to the court for the purpose of assisting the court in its final sentencing
22 determination. If such report indicates that the evaluation and assessment shows that the defendant
23 would benefit from a ten-hour or twenty-four-hour alcohol and drug substance abuse course or a
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1 treatment program or both, the court shall, as a condition of any sentence imposed, including deferred
2 and suspended sentences, require the person to follow all recommendations identified by the evaluation
3 and assessment and ordered by the court. No person, agency or facility operating an evaluation and
4 assessment program certified by the Department of Mental Health and Substance Abuse Services shall
5 solicit or refer any person evaluated and assessed pursuant to this section for any treatment program or
6 substance abuse service in which such person, agency or facility has a vested interest; however, this
7 provision shall not be construed to prohibit the court from ordering participation in or any person from
8 voluntarily utilizing a treatment program or substance abuse service offered by such person, agency or
9 facility. If a person is sentenced to imprisonment in the custody of the Department of Corrections and
10 the court has received a written evaluation report pursuant to the provisions of this subsection, the
11 report shall be furnished to the Department of Corrections with the judgment and sentence. Any
12 evaluation and assessment report submitted to the court pursuant to the provisions of this subsection
13 shall be handled in a manner which will keep such report confidential from the general public's
14 review. Nothing contained in this subsection shall be construed to prohibit the court from ordering
15 judgment and sentence in the event the defendant fails or refuses to comply with an order of the court
16 to obtain the evaluation and assessment required by this subsection. If the defendant fails or refuses to
17 comply with an order of the court to obtain the evaluation and assessment, the Department of Public
18 Safety shall not reinstate driving privileges until the defendant has complied in full with such order.
19 Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment
20 and sentence and any other sanction authorized by law for failure or refusal to comply with an order of
21 the court.

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

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

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

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

20 L. When a person is found guilty of a violation of the provisions of this section, the court shall
21 order, in addition to any other penalty, the defendant to pay a one-hundred-dollar assessment to be
22 deposited in the Drug Abuse Education and Treatment Revolving Fund created in Section 2-503.2 of
23 Title 63 of the Oklahoma Statutes, upon collection.
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1 M. In any case in which a person is convicted of violating the provisions of this section and who
2 was transporting in the motor vehicle a child fifteen (15) years of age or younger, the fine shall be
3 enhanced to double the amount of the whole sum otherwise prescribed.

4 SECTION 2. This act shall become effective November 1, 2009.

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