

THE HOUSE OF REPRESENTATIVES  
Thursday, February 26, 2009

Committee Substitute for  
House Bill No. 1299

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 1299 - By: JORDAN AND INMAN  
of the House and NEWBERRY of the Senate.

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

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

- 1 SECTION 1. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by  
2 Section 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2008, Section 11-902), is amended to  
3 read as follows:
- 4 Section 11-902. A. It is unlawful and punishable as provided in this section for any  
5 person to drive, operate, or be in actual physical control of a motor vehicle within this  
6 state, whether upon public roads, highways, streets, turnpikes, other public places or  
7 upon any private road, street, alley or lane which provides access to one or more single or  
8 multi-family dwellings, who:
- 9 1. Has a blood or breath alcohol concentration, as defined in Section 756 of this  
10 title, of eight-hundredths (0.08) or more at the time of a test of such person's blood or  
11 breath administered within two (2) hours after the arrest of such person;

1           2. Is under the influence of alcohol;

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

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

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

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

18          2. Any person who, within ten (10) years after a previous conviction of a violation of  
19 this section or a violation pursuant to the provisions of any law of another state  
20 prohibiting the offense provided in subsection A of this section, ~~is convicted of~~ commits a  
21 second offense pursuant to the provisions of this section or has a prior conviction in a  
22 municipal criminal court of record for the violation of a municipal ordinance prohibiting

1 the offense provided for in subsection A of this section and within ten (10) years of such  
2 municipal conviction ~~is convicted~~ commits a second offense pursuant to the provision of  
3 this section shall be deemed guilty of a felony and shall participate in an assessment and  
4 evaluation by an assessment agency or assessment personnel certified by the  
5 Department of Mental Health and Substance Abuse Services pursuant to Section 3-460  
6 of Title 43A of the Oklahoma Statutes and shall be sentenced to:

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

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

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

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

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

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

- 17 a. follow all recommendations made in the assessment and evaluation for
- 18 treatment at the defendant's expense, followed by not less than one (1)
- 19 year of supervision and periodic testing at the defendant's expense,
- 20 four hundred eighty (480) hours of community service, and use of an
- 21 ignition interlock device for a minimum of thirty (30) days, or

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

- 1           b.     placement in the custody of the Department of Corrections for not less  
2                     than one (1) year and not to exceed ten (10) years and a fine of not  
3                     more than Five Thousand Dollars (\$5,000.00), or  
4           c.     treatment, imprisonment and a fine within the limitations prescribed  
5                     in subparagraphs a and b of this paragraph.

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

9           5. Any person who, ~~within ten (10) years~~ after a previous conviction of a violation of  
10   murder in the second degree or manslaughter in the first degree in which the death was  
11   caused as a result of driving while impaired or under the influence of alcohol or other  
12   intoxicating substance or after a previous conviction for an offense as provided in Section  
13   11-904 of this title, is convicted of a violation of this section shall be deemed guilty of a  
14   felony.

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

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

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

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

- 18 1. The Department of Mental Health and Substance Abuse Services pursuant to  
19 paragraph 1 of subsection A of Section 612 of Title 57 of the Oklahoma Statutes; or
- 20 2. A correctional facility operated by the Department of Corrections with  
21 assignment to substance abuse treatment.

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

4 G. Any person who is found guilty of a violation of the provisions of this section  
5 shall be ordered to participate in, prior to sentencing, an alcohol and drug substance  
6 abuse evaluation and assessment program offered by a certified assessment agency or  
7 certified assessor for the purpose of evaluating and assessing the receptivity to treatment  
8 and prognosis of the person. The court shall order the person to reimburse the agency or  
9 assessor for the evaluation and assessment. The fee for an evaluation and assessment  
10 shall be the amount provided in subsection C of Section 3-460 of Title 43A of the  
11 Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified  
12 assessment agency, the office of a certified assessor or at another location as ordered by  
13 the court. The agency or assessor shall, within seventy-two (72) hours from the time the  
14 person is evaluated and assessed, submit a written report to the court for the purpose of  
15 assisting the court in its final sentencing determination. If such report indicates that the  
16 evaluation and assessment shows that the defendant would benefit from a ten-hour or  
17 twenty-four-hour alcohol and drug substance abuse course or a treatment program or  
18 both, the court shall, as a condition of any sentence imposed, including deferred and  
19 suspended sentences, require the person to follow all recommendations identified by the  
20 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  
22 Health and Substance Abuse Services shall solicit or refer any person evaluated and

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

20 H. Any person who is found guilty of a violation of the provisions of this section  
21 may be required by the court to attend a victims impact panel program, if such a  
22 program is offered in the county where the judgment is rendered, and to pay a fee, not

1 less than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars (\$25.00) as set by  
2 the governing authority of the program and approved by the court, to the program to  
3 offset the cost of participation by the defendant, if in the opinion of the court the  
4 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  
6 section may be required to submit to electronic monitoring as authorized and defined by  
7 Section 991a of Title 22 of the Oklahoma Statutes.

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

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

21 L. When a person is found guilty of a violation of the provisions of this section, the  
22 court shall order, in addition to any other penalty, the defendant to pay a one-hundred-

1 dollar assessment to be deposited in the Drug Abuse Education and Treatment Revolving  
2 Fund created in Section 2-503.2 of Title 63 of the Oklahoma Statutes, upon collection.

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

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

8 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-25-09 - DO PASS,  
9 As Amended and Coauthored.