

THE HOUSE OF REPRESENTATIVES
Monday, April 12, 2010

Committee Substitute for
ENGROSSED
Senate Bill No. 2291

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 2291 - By:
PADDACK of the Senate and BILLY of the House.

[motor vehicles - driving under the influence - Department of Public Safety -
courts of record - 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 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp. 2009, 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. A record of conviction for any of the offenses provided in this section, or
11 pursuant to any record of conviction for driving, operating or being in actual physical
12 control of a motor vehicle while under the influence of alcohol or any other intoxicating
13 substance in a municipal court, shall be forwarded to the Department of Public Safety.

14 D. 1. Any person who is convicted of a violation of the provisions of this section
15 shall be deemed guilty of a misdemeanor for the first offense and shall participate in an
16 assessment and evaluation by an assessment agency or assessment personnel certified by
17 the Department of Mental Health and Substance Abuse Services pursuant to Section 3-
18 460 of Title 43A of the Oklahoma Statutes and shall follow all recommendations made in
19 the assessment and evaluation and be punished by imprisonment in jail for not less than
20 ten (10) days nor more than one (1) year. Any person convicted of a violation for a first
21 offense shall be fined not more than One Thousand Dollars (\$1,000.00).

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

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

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

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

- 6 a. follow all recommendations made in the assessment and evaluation for
7 treatment at the defendant's expense, two hundred forty (240) hours of
8 community service and use of an ignition interlock device, or
- 9 b. placement in the custody of the Department of Corrections for not less
10 than one (1) year and not to exceed ten (10) years and a fine of not
11 more than Five Thousand Dollars (\$5,000.00), 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 ten (10) days, the person
16 shall serve a term of imprisonment of at least ten (10) days.

17 4. Any person who is convicted of a third or subsequent felony offense pursuant to
18 the provisions of this section shall participate in an assessment and evaluation by an
19 assessment agency or assessment personnel certified by the Department of Mental
20 Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the
21 Oklahoma 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, followed by not less than one (1)
3 year of supervision and periodic testing at the defendant's expense,
4 four hundred eighty (480) hours of community service, and use of an
5 ignition interlock device for a minimum of thirty (30) days, or
6 b. placement in the custody of the Department of Corrections for not less
7 than one (1) year and not to exceed twenty (20) years and a fine of not
8 more than Five Thousand Dollars (\$5,000.00), or
9 c. treatment, imprisonment and a fine within the limitations prescribed
10 in subparagraphs a and b of this paragraph.

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

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

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

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

1 municipality with a municipal court other than a court of record, the charge shall be
2 presented to the county's district attorney, ~~and~~ filed with the district court of the county
3 within which the municipality is located, and the information shall be forwarded to the
4 Department of Public Safety.

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

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

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

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

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

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

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

1 suspended sentences, require the person to follow all recommendations identified by the
2 evaluation and assessment and ordered by the court. No person, agency or facility
3 operating an evaluation and assessment program certified by the Department of Mental
4 Health and Substance Abuse Services shall solicit or refer any person evaluated and
5 assessed pursuant to this section for any treatment program or substance abuse service
6 in which such person, agency or facility has a vested interest; however, this provision
7 shall not be construed to prohibit the court from ordering participation in or any person
8 from voluntarily utilizing a treatment program or substance abuse service offered by
9 such person, agency or facility. If a person is sentenced to imprisonment in the custody
10 of the Department of Corrections and the court has received a written evaluation report
11 pursuant to the provisions of this subsection, the report shall be furnished to the
12 Department of Corrections with the judgment and sentence. Any evaluation and
13 assessment report submitted to the court pursuant to the provisions of this subsection
14 shall be handled in a manner which will keep such report confidential from the general
15 public's review. Nothing contained in this subsection shall be construed to prohibit the
16 court from ordering judgment and sentence in the event the defendant fails or refuses to
17 comply with an order of the court to obtain the evaluation and assessment required by
18 this subsection. If the defendant fails or refuses to comply with an order of the court to
19 obtain the evaluation and assessment, the Department of Public Safety shall not
20 reinstate driving privileges until the defendant has complied in full with such order.
21 Nothing contained in this subsection shall be construed to prohibit the court from

1 ordering judgment and sentence and any other sanction authorized by law for failure or
2 refusal to comply with an order of the court.

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

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

13 ~~J.~~ K. Any person who, within ten (10) years after a previous conviction of a
14 violation of this section or a violation pursuant to the provisions of law of another state
15 prohibiting the offense provided in subsection A of this section or a violation of a
16 municipal ordinance prohibiting the offense provided in subsection A of this section,
17 pleads guilty or nolo contendere or is convicted of a violation of this section shall not be
18 required to undergo the alcohol and drug substance evaluation program required by
19 subsection ~~G.~~ H. of this section. The court shall, as a condition of any sentence imposed,
20 including deferred and suspended sentences, require the person to participate in and
21 successfully complete all recommendations from the evaluation, such as an alcohol and

1 drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the
2 Oklahoma Statutes.

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

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

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

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

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

1 Section 27-101. A. A municipality may create a Municipal Court, as provided in
2 this article, which shall be a court not of record. This court may be created in addition to
3 a Municipal Criminal Court of Record. References in Sections 27-101 through 27-131 of
4 this title to the municipal court shall mean the municipal court not of record established
5 under the authority of the provisions of this article.

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

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

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

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

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

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

11 SECTION 4. This act shall become effective November 1, 2010.

12 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 04-08-10 - DO
13 PASS, As Amended.