

ESB 1138

THE HOUSE OF REPRESENTATIVES  
Monday, April 13, 2009

ENGROSSED  
Senate Bill No. 1138  
As Amended

ENGROSSED SENATE BILL NO. 1138 - By: EASLEY of the Senate and MCDANIEL (JEANNIE) of the House.

( crimes and punishments - child endangerment - DUI - effective date - emergency )

1 SECTION 1. AMENDATORY 21 O.S. 2001, Section 852.1, is amended to read  
2 as follows:

3 Section 852.1 A. A person who is the parent, guardian, or person having custody or  
4 control over a child as defined in Section 7001-1.3 of Title 10 of the Oklahoma Statutes,  
5 commits child endangerment when the person ~~knowingly~~:

6 1. Knowingly permits physical or sexual abuse of a child ~~or who knowingly~~;

7 2. Knowingly permits a child to be present at a location where a controlled  
8 dangerous substance is being manufactured or attempted to be manufactured as defined  
9 in Section 2-101 of Title 63 of the Oklahoma Statutes;

10 3. Knowingly permits a child to be present in a vehicle when the person has  
11 knowledge or a reasonable belief that the operator of the vehicle is impaired by or is

1 under the influence of alcohol or another intoxicating substance to such a degree the  
2 operator's ability to drive is adversely affected; or

3 4. Is the driver, operator, or person in physical control of a vehicle in violation of  
4 Section 11-902 of Title 47 of the Oklahoma Statutes while transporting or having in the  
5 vehicle such child or children.

6 However, it is an affirmative defense to this paragraph if the person had a  
7 reasonable apprehension that any action to stop the physical or sexual abuse or deny  
8 permission for the child to be in the vehicle with an intoxicated person would result in  
9 substantial bodily harm to the person or the child.

10 B. The provisions of this section shall not apply to any parent, guardian or other  
11 person having custody or control of a child for the sole reason that the parent, guardian  
12 or other person in good faith selects and depends upon spiritual means or prayer for the  
13 treatment or cure of disease or remedial care for such child. This subsection shall in no  
14 way limit or modify the protections afforded said child in Section 852 of this title or  
15 Section 7006-1.1 of Title 10 of the Oklahoma Statutes.

16 C. Any person convicted of violating any provision of this section shall be guilty of a  
17 felony punishable by imprisonment in the custody of the Department of Corrections for a  
18 term of not more than four (4) years in the State Penitentiary, or by ~~the imposition of a~~  
19 ~~fine of not more than~~ exceeding Five Thousand Dollars (\$5,000.00), or by both such fine  
20 and imprisonment.

1 SECTION 2. 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;
- 12 2. Is under the influence of alcohol;
- 13 3. Is under the influence of any intoxicating substance other than alcohol which  
14 may render such person incapable of safely driving or operating a motor vehicle; or
- 15 4. Is under the combined influence of alcohol and any other intoxicating substance  
16 which may render such person incapable of safely driving or operating a motor vehicle.

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

21 C. 1. Any person who is convicted of a violation of the provisions of this section  
22 shall be deemed guilty of a misdemeanor for the first offense and shall participate in an

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

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

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

- 18 a. follow all recommendations made in the assessment and evaluation for  
19 treatment at the defendant's expense, or  
20 b. placement in the custody of the Department of Corrections for not less  
21 than one (1) year and not to exceed five (5) years and a fine of not more  
22 than Two Thousand Five Hundred Dollars (\$2,500.00), or

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

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

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

11 a. follow all recommendations made in the assessment and evaluation for  
12 treatment at the defendant's expense, two hundred forty (240) hours of  
13 community service and use of an ignition interlock device, or

14 b. placement in the custody of the Department of Corrections for not less  
15 than one (1) year and not to exceed seven (7) years and a fine of not  
16 more than Five Thousand Dollars (\$5,000.00), 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 ten (10) days, the person  
21 shall serve a term of imprisonment of at least ten (10) days.

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

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

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

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

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

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

21           E. When a person is sentenced to imprisonment in the custody of the Department  
22 of Corrections, the person shall be processed through the Lexington Assessment and

1 Reception Center or at a place determined by the Director of the Department of  
2 Corrections. The Department of Corrections shall classify and assign the person to one  
3 or more of the following:

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

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

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

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

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

1 reinstate driving privileges until the defendant has complied in full with such order.  
2 Nothing contained in this subsection shall be construed to prohibit the court from  
3 ordering judgment and sentence and any other sanction authorized by law for failure or  
4 refusal to comply with an order of the court.

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

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

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

1 recommendations from the evaluation, such as an alcohol and drug substance abuse  
2 treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

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

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

10 M. ~~In any case in which~~ 1. When a person is twenty-one (21) years of age or older,  
11 and is the driver, operator, or person in physical control of a vehicle, and is convicted of  
12 violating the provisions any provision of this section and who was while transporting or  
13 having in the motor vehicle a at the time of arrest any child fifteen (15) less than  
14 eighteen (18) years of age or younger, the fine person shall be enhanced to guilty of child  
15 endangerment by DUI. Upon conviction of child endangerment by DUI pursuant to this  
16 subsection, the violator shall be fined an amount not exceeding a sum which is double the  
17 amount of the whole sum otherwise prescribed fine imposed against the person for the  
18 underlying DUI violation.

19 2. When a person is the parent, guardian, or person having custody or control of a  
20 child as defined by Section 7001-1.3 of Title 10 of the Oklahoma Statutes, and is the  
21 driver, operator, or person in physical control of the vehicle, and is convicted of violating  
22 any provision of this section while transporting or having in the motor vehicle at the time

1 of arrest such child or children, the person shall be guilty of felony child endangerment  
2 as provided in Section 852.1 of Title 21 of the Oklahoma Statutes.

3 SECTION 3. AMENDATORY 43 O.S. 2001, Section 111.1, is amended to read  
4 as follows:

5 Section 111.1 A. 1. Any order providing for the visitation of a noncustodial parent  
6 with any of the children of such noncustodial parent shall provide a specified minimum  
7 amount of visitation between the noncustodial parent and the child unless the court  
8 determines otherwise.

9 2. Except for good cause shown and when in the best interests of the child, the  
10 order shall encourage additional visitations of the noncustodial parent and the child and  
11 in addition encourage liberal telephone communications between the noncustodial parent  
12 and the child.

13 B. 1. Except for good cause shown, when a noncustodial parent who is ordered to  
14 pay child support and who is awarded visitation rights fails to pay child support, the  
15 custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

16 2. When a custodial parent refuses to honor a noncustodial parent's visitation  
17 rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

18 C. 1. Violation of an order providing for the payment of child support or providing  
19 for the visitation of a noncustodial parent with any of the children of such noncustodial  
20 parent may be prosecuted as indirect civil contempt pursuant to Section 566 of Title 21 of  
21 the Oklahoma Statutes or as otherwise deemed appropriate by the court.

1           2. Any person complying in good faith with the provisions of Section 852.1 of Title  
2 21 of the Oklahoma Statutes, by refusing to allow his or her child to be transported by an  
3 intoxicated driver, shall have an affirmative defense to a contempt of court proceeding in  
4 a divorce or custody action.

5           3. Unless good cause is shown for the noncompliance, the prevailing party shall be  
6 entitled to recover court costs and attorney fees expended in enforcing the order and any  
7 other reasonable costs and expenses incurred in connection with the denied child support  
8 or denied visitation as authorized by the court.

9           SECTION 4. This act shall become effective July 1, 2009.

10          SECTION 5. It being immediately necessary for the preservation of the public  
11 peace, health and safety, an emergency is hereby declared to exist, by reason whereof  
12 this act shall take effect and be in full force from and after its passage and approval.

13          COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 04-09-09 - DO  
14          PASS, As Amended.