

SB 2291

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THE STATE SENATE  
Tuesday, February 16, 2010

Senate Bill No. 2291  
As Amended

SENATE BILL NO. 2291 - By: Paddock 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:

SECTION 1. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp. 2009, Section 11-902), is amended to read as follows:

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

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

2. Is under the influence of alcohol;

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

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

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

12           C. A record of conviction for any of the offenses provided in  
13 this section, or pursuant to any record of conviction for driving,  
14 operating or being in actual physical control of a motor vehicle  
15 while under the influence of alcohol or any other intoxicating  
16 substance in a municipal court, shall be forwarded to the Department  
17 of Public Safety.

18           D. 1. Any person who is convicted of a violation of the  
19 provisions of this section shall be deemed guilty of a misdemeanor  
20 for the first offense and shall participate in an assessment and  
21 evaluation by an assessment agency or assessment personnel certified  
22 by the Department of Mental Health and Substance Abuse Services  
23 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and

1 shall follow all recommendations made in the assessment and  
2 evaluation and be punished by imprisonment in jail for not less than  
3 ten (10) days nor more than one (1) year. Any person convicted of a  
4 violation for a first offense shall be fined not more than One  
5 Thousand Dollars (\$1,000.00).

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

20 a. follow all recommendations made in the assessment and  
21 evaluation for treatment at the defendant's expense,  
22 or



1           exceed ten (10) years and a fine of not more than Five  
2           Thousand Dollars (\$5,000.00), or

3           c.    treatment, imprisonment and a fine within the  
4           limitations prescribed in subparagraphs a and b of  
5           this paragraph.

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

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

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



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

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

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

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

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

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

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

14 G. Any person who is found guilty of a violation of the  
15 provisions of this section shall be ordered to participate in, prior  
16 to sentencing, an alcohol and drug substance abuse evaluation and  
17 assessment program offered by a certified assessment agency or  
18 certified assessor for the purpose of evaluating and assessing the  
19 receptivity to treatment and prognosis of the person. The court  
20 shall order the person to reimburse the agency or assessor for the  
21 evaluation and assessment. The fee for an evaluation and assessment  
22 shall be the amount provided in subsection C of Section 3-460 of  
23 Title 43A of the Oklahoma Statutes. The evaluation and assessment

1 shall be conducted at a certified assessment agency, the office of a  
2 certified assessor or at another location as ordered by the court.  
3 The agency or assessor shall, within seventy-two (72) hours from the  
4 time the person is evaluated and assessed, submit a written report  
5 to the court for the purpose of assisting the court in its final  
6 sentencing determination. If such report indicates that the  
7 evaluation and assessment shows that the defendant would benefit  
8 from a ten-hour or twenty-four-hour alcohol and drug substance abuse  
9 course or a treatment program or both, the court shall, as a  
10 condition of any sentence imposed, including deferred and suspended  
11 sentences, require the person to follow all recommendations  
12 identified by the evaluation and assessment and ordered by the  
13 court. No person, agency or facility operating an evaluation and  
14 assessment program certified by the Department of Mental Health and  
15 Substance Abuse Services shall solicit or refer any person evaluated  
16 and assessed pursuant to this section for any treatment program or  
17 substance abuse service in which such person, agency or facility has  
18 a vested interest; however, this provision shall not be construed to  
19 prohibit the court from ordering participation in or any person from  
20 voluntarily utilizing a treatment program or substance abuse service  
21 offered by such person, agency or facility. If a person is  
22 sentenced to imprisonment in the custody of the Department of  
23 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. 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

1 approved by the court, to the program to offset the cost of  
2 participation by the defendant, if in the opinion of the court the  
3 defendant has the ability to pay such fee.

4 I. Any person who is found guilty of a felony violation of the  
5 provisions of this section may be required to submit to electronic  
6 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  
9 conviction of a violation of this section or a violation pursuant to  
10 the provisions of law of another state prohibiting the offense  
11 provided in subsection A of this section or a violation of a  
12 municipal ordinance prohibiting the offense provided in subsection A  
13 of this section, pleads guilty or nolo contendere or is convicted of  
14 a violation of this section shall not be required to undergo the  
15 alcohol and drug substance evaluation program required by subsection  
16 G of this section. The court shall, as a condition of any sentence  
17 imposed, including deferred and suspended sentences, require the  
18 person to participate in and successfully complete all  
19 recommendations from the evaluation, such as an alcohol and drug  
20 substance abuse treatment program pursuant to Section 3-452 of Title  
21 43A of the Oklahoma Statutes.

22 K. Any person who is found guilty of a violation of the  
23 provisions of this section who has been sentenced by the court to

1 perform any type of community service shall not be permitted to pay  
2 a fine in lieu of performing the community service.

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

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

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

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

22 Section 27-101. A. A municipality may create a Municipal  
23 Court, as provided in this article, which shall be a court not of

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

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

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

14 Section 28-101. A. In cities having a population of more than  
15 sixty-five thousand (65,000) inhabitants, as determined by the  
16 latest federal census, there is hereby created a "Municipal Criminal  
17 Court of Record of the City of \_\_\_\_\_", subject to the  
18 restrictions of subsection B of this section. References in  
19 Sections 28-101 through 28-128 of this title to the municipal  
20 criminal court of record shall mean the courts established by the  
21 provisions of this article in cities over sixty-five thousand  
22 (65,000) population.

1           B. Before a municipal criminal court of record not in existence  
2 before November 1, 2004, may be created, the municipal governing  
3 body shall determine by resolution that the efficient disposition of  
4 cases involving the violation of municipal ordinances necessitates  
5 creating a court of record. If such a resolution is not adopted,  
6 the criminal court of the municipality shall remain a court not of  
7 record. The governing body shall cause a certified copy of the  
8 resolution to be filed in the office of the county clerk of each  
9 county in which the municipality is located. The resolution and the  
10 filing thereof shall be judicially noticed in all courts of this  
11 state. The provisions of this subsection shall not apply to any  
12 municipal criminal court of record created prior to November 1,  
13 2004, and such courts shall have all the powers and duties  
14 heretofore provided for such courts.

15           C. All municipal criminal courts of record shall forward  
16 information regarding the conviction of a person driving under the  
17 influence of alcohol or other intoxicating substance, pursuant to  
18 section 11-902 of Title 47 of the Oklahoma Statutes, to the  
19 Department of Public Safety.

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

21           COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY & HOMELAND SECURITY,  
22 dated 2-9-10 - DO PASS, As Amended and Coauthored.