

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1409

By: Buck

4
5
6 AS INTRODUCED

7 An Act relating to motor vehicles; making certain act
8 unlawful; providing penalties for crime of actual
9 physical control; amending 20 O.S. 2001, Section 123,
10 which relates to the jurisdiction of special judges;
11 deleting certain crime that special judges may hear
12 and decide; amending 22 O.S. 2001, Section 196, which
13 relates to the arrest of persons without a warrant;
14 deleting certain crime from category that provides
15 for warrantless arrests; amending 22 O.S. 2001,
16 Sections 1115.1, as amended by Section 3, Chapter
17 204, O.S.L. 2006 and 1115.3, as amended by Section 5,
18 Chapter 204, O.S.L. 2006 (22 O.S. Supp. 2008,
19 Sections 1115.1 and 1115.3), which relate to the
20 State and Municipal Traffic, Water Safety, and
21 Wildlife Bail Bond Procedure Act; deleting certain
22 crime from list of offenses that prohibit release on
23 personal recognizance; deleting certain crime from
24 offenses that prescribe the posting of bail; amending
47 O.S. 2001, Sections 6-205, as last amended by
Section 17, Chapter 311, O.S.L. 2006 and 6-205.2, as
last amended by Section 19, Chapter 311, O.S.L. 2006
(47 O.S. Supp. 2008, Sections 6-205 and 6-205.2),
which relate to driver license revocation and
disqualification of driving privileges; deleting
certain crime from list of offenses that require
mandatory driver license revocation and driving
privilege disqualification; 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 penalties for driving under
the influence of alcohol or other intoxicating
substance; deleting certain crime from list of
offenses considered unlawful; amending 47 O.S. 2001,
Sections 11-906.2, 11-906.3 and 11-906.4, which
relate to the Drunk Driving Prevention Act; deleting

1 certain crime from purpose and contents of Drunk
2 Driving Prevention Act and list of offenses
3 considered unlawful; amending 47 O.S. 2001, Sections
4 751 and 752, as last amended by Sections 4 and 5,
5 Chapter 173, O.S.L. 2006, 753, as amended by Section
6 6, Chapter 173, O.S.L. 2006, 754, as last amended by
7 Section 16, Chapter 394, O.S.L. 2005 and 756, as
8 amended by Section 7, Chapter 173, O.S.L. 2006 (47
9 O.S. Supp. 2008, Sections 751, 752, 753, 754 and
10 756), which relate to the administration of implied
11 consent chemical tests; deleting certain crime from
12 implied consent testing and administrative hearing
13 requirements; providing for codification; and
14 providing an effective date.

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

16 SECTION 1. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 11-905 of Title 47, unless there
18 is created a duplication in numbering, reads as follows:

19 A. It shall be unlawful for any person who is under the
20 influence of alcohol or other intoxicating substance or the combined
21 influence of alcohol and any other intoxicating substance to be in
22 actual physical control of a motor vehicle within this state,
23 whether upon public roads, highways, streets, turnpikes, other
24 public places or upon any private road, street, alley or lane which
25 provides access to one or more single- or multi-family dwellings.

26 B. Any person who is convicted of a violation of this section
27 shall be guilty of a misdemeanor, punishable by imprisonment in the
28 county jail for not less than five (5) days nor more than thirty
29 (30) days, or by a fine of not less than Ten Dollars (\$10.00) nor

1 more than One Hundred Dollars (\$100.00), or by both such fine and
2 imprisonment.

3 SECTION 2. AMENDATORY 20 O.S. 2001, Section 123, is
4 amended to read as follows:

5 Section 123. A. Special judges may hear and decide the
6 following:

7 1. Actions for the recovery of money where the amount claimed
8 does not exceed Ten Thousand Dollars (\$10,000.00) and counterclaim
9 or setoff does not exceed Ten Thousand Dollars (\$10,000.00);

10 2. All uncontested matters, whether by default, agreement or
11 otherwise, except that a nonlawyer special judge may not hear any
12 uncontested matters, whether by default, agreement or otherwise, in
13 actions for the recovery of money where judgment is sought for a
14 greater sum than One Thousand Dollars (\$1,000.00);

15 3. Actions for forcible entry and detainer except a nonlawyer
16 special judge may not hear such actions if title to land or a
17 boundary dispute is involved;

18 4. Actions for replevin where the amount in controversy does
19 not exceed Ten Thousand Dollars (\$10,000.00), except that nonlawyer
20 special judges may not hear such actions where the amount in
21 controversy exceeds One Thousand Dollars (\$1,000.00);

22 5. Misdemeanors, except that special judges who are not lawyers
23 may not hear criminal actions where the punishment prescribed by law
24 exceeds a fine of Two Hundred Dollars (\$200.00), or imprisonment in

1 a county jail for thirty (30) days, or both such fine and
2 imprisonment except by written consent of all parties;

3 6. Felonies involving a second and subsequent offense of
4 driving, or operating, ~~or being in actual physical control~~ of a
5 motor vehicle while under the influence of alcohol or any other
6 intoxicating substance, including any controlled dangerous substance
7 as defined in the Uniform Controlled Dangerous Substances Act, to a
8 degree that renders the defendant incapable of safely driving or
9 operating a motor vehicle, except that nonlawyer special judges may
10 not hear such matters;

11 7. When there is no district or associate district judge
12 present in the county or when they are disqualified, the issuance of
13 a temporary injunction or restraining order, but this paragraph
14 shall not embrace nonlawyer special judges;

15 8. Issuance of writs of habeas corpus, but this paragraph shall
16 not embrace nonlawyer special judges;

17 9. Any matter, regardless of value, at any stage, whether
18 intermediate or final, and whether or not title to property, real,
19 personal, tangible, intangible, or any combination thereof, is to be
20 determined, in a probate, divorce, domestic relations, custody,
21 support, guardianship, conservatorship, mental health, juvenile,
22 adoption, or determination of death proceeding, except that
23 nonlawyer special judges may not hear such matters;

24

1 10. An appeal from an order of the Department of Public Safety
2 revoking a person's license to drive, except that nonlawyer special
3 judges may not hear such matters;

4 11. Other actions and proceedings, regardless of court rules,
5 where the parties agree in writing, at any time before trial, to the
6 action being heard by a special judge;

7 12. Any postjudgment collection matter regardless of the amount
8 of the judgment; and

9 13. Youthful offender cases pursuant to the Youthful Offender
10 Act.

11 B. Special judges shall be authorized to serve as referee in
12 any matter before the district court.

13 C. A special judge may perform the duties of a magistrate in
14 criminal cases.

15 SECTION 3. AMENDATORY 22 O.S. 2001, Section 196, is
16 amended to read as follows:

17 Section 196. A peace officer may, without a warrant, arrest a
18 person:

19 1. For a public offense, committed or attempted in the
20 officer's presence;

21 2. When the person arrested has committed a felony, although
22 not in the officer's presence;

23

24

1 3. When a felony has in fact been committed, and the officer
2 has reasonable cause to believe the person arrested to have
3 committed it;

4 4. On a charge, made upon reasonable cause, of the commission
5 of a felony by the party arrested;

6 5. When the officer has probable cause to believe that the
7 party was driving ~~or in actual physical control of~~ a motor vehicle
8 involved in an accident upon the public highways, streets or
9 turnpikes and was under the influence of alcohol or intoxicating
10 liquor or who was under the influence of any substance included in
11 the Uniform Controlled Dangerous Substances Act, ~~Sections 2-101 et~~
12 ~~seq. of Title 63 of the Oklahoma Statutes;~~

13 6. Anywhere, including a place of residence of the person, if
14 the peace officer has probable cause to believe the person within
15 the preceding seventy-two (72) hours has committed an act of
16 domestic abuse as defined by Section 60.1 of this title, although
17 the assault did not take place in the presence of the peace officer.
18 A peace officer may not arrest a person pursuant to this section
19 without first observing a recent physical injury to, or an
20 impairment of the physical condition of, the alleged victim;

21 7. When a peace officer, in accordance with the provisions of
22 Section 60.9 of this title, is acting on a violation of a protective
23 order offense; or

1 8. When the officer has probable cause to believe that the
2 person has threatened another person as defined in subsection B of
3 Section ~~14~~ 1378 of ~~this act~~ Title 21 of the Oklahoma Statutes.

4 SECTION 4. AMENDATORY 22 O.S. 2001, Section 1115.1, as
5 amended by Section 3, Chapter 204, O.S.L. 2006 (22 O.S. Supp. 2008,
6 Section 1115.1), is amended to read as follows:

7 Section 1115.1 A. In addition to other provisions of law for
8 posting bail, any person, whether a resident of this state or a
9 nonresident, who is arrested by a law enforcement officer solely for
10 a misdemeanor violation of a state traffic law or municipal traffic
11 ordinance, shall be released by the arresting officer upon personal
12 recognizance if:

13 1. The arrested person has been issued a valid license to
14 operate a motor vehicle by this state, another state jurisdiction
15 within the United States, which is a participant in the Nonresident
16 Violator Compact or any party jurisdiction of the Nonresident
17 Violator Compact;

18 2. The arresting officer is satisfied as to the identity of the
19 arrested person;

20 3. The arrested person signs a written promise to appear as
21 provided for on the citation, unless the person is unconscious or
22 injured and requires immediate medical treatment as determined by a
23 treating physician; and

24 4. The violation does not constitute:

- 1 a. a felony, or
- 2 b. negligent homicide, or
- 3 c. driving ~~or being in actual physical control of~~ a motor
4 vehicle while impaired or under the influence of
5 alcohol or other intoxicating substances, unless the
6 person is unconscious or injured and requires
7 immediate medical treatment as determined by a
8 treating physician, or
- 9 d. eluding or attempting to elude a law enforcement
10 officer, or
- 11 e. operating a motor vehicle without having been issued a
12 valid driver license, or while the driving privilege
13 and driver license is under suspension, revocation,
14 denial or cancellation, or
- 15 f. an arrest based upon an outstanding warrant, or
- 16 g. a traffic violation coupled with any offense stated in
17 subparagraphs a through f of this paragraph.

18 B. If the arrested person is eligible for release on personal
19 recognizance as provided for in subsection A of this section, then
20 the arresting officer shall:

- 21 1. Designate the traffic charge;
- 22 2. Record information from the arrested person's driver license
23 on the citation form, including the name, address, date of birth,
24

1 personal description, type of driver license, driver license number,
2 issuing state, and expiration date;

3 3. Record the motor vehicle make, model and tag information;

4 4. Record the date and time on the citation on which, or before
5 which, the arrested person promises to contact, pay, or appear at
6 the court, as applicable to the court; and

7 5. Permit the arrested person to sign a written promise to
8 contact, pay, or appear at the court, as provided for in the
9 citation.

10 The arresting officer shall then release the person upon personal
11 recognizance based upon the signed promise to appear. The citation
12 shall contain a written notice to the arrested person that release
13 upon personal recognizance based upon a signed written promise to
14 appear for arraignment is conditional and that failure to timely
15 appear for arraignment shall result in the suspension of the
16 arrested person's driving privilege and driver license in this
17 state, or in the nonresident's home state pursuant to the
18 Nonresident Violator Compact.

19 C. The court, or the court clerk as directed by the court, may
20 continue or reschedule the date and time of arraignment upon request
21 of the arrested person or the attorney for that person. If the
22 arraignment is continued or rescheduled, the arrested person shall
23 remain on personal recognizance and written promise to appear until
24 such arraignment, in the same manner and with the same consequences

1 as if the continued or rescheduled arraignment was entered on the
2 citation by the arresting officer and signed by the defendant. An
3 arraignment may be continued or rescheduled more than one time.
4 Provided, however, the court shall require an arraignment to be had
5 within a reasonable time. It shall remain the duty of the defendant
6 to appear for arraignment unless the citation is satisfied as
7 provided for in subsection D of this section.

8 D. A defendant released upon personal recognizance may elect to
9 enter a plea of guilty or nolo contendere to the violation charged
10 at any time before the defendant is required to appear for
11 arraignment by indicating such plea on the copy of the citation
12 furnished to the defendant or on a legible copy thereof, together
13 with the date of the plea and signature. The defendant shall be
14 responsible for assuring full payment of the fine and costs to the
15 appropriate court clerk. Payment of the fine and costs may be made
16 by personal, cashier's, traveler's, certified or guaranteed bank
17 check, postal or commercial money order, or other form of payment
18 approved by the court in an amount prescribed as bail for the
19 offense. Provided, however, the defendant shall not use currency
20 for payment by mail. If the defendant has entered a plea of guilty
21 or nolo contendere as provided for in this subsection, such plea
22 shall be accepted by the court and the amount of the fine and costs
23 shall be:

24

1 1. As prescribed in Section 1115.3 of this title as bail for
2 the violation; or

3 2. In case of a municipal violation, as prescribed by municipal
4 ordinance for the violation charged; or

5 3. In the absence of such law or ordinance, then as prescribed
6 by the court.

7 E. 1. If, pursuant to the provisions of subsection D of this
8 section, the defendant does not timely elect to enter a plea of
9 guilty or nolo contendere and fails to timely appear for
10 arraignment, the court may issue a warrant for the arrest of the
11 defendant and the municipal or district court clerk, within one
12 hundred twenty (120) calendar days from the date the citation was
13 issued by the arresting officer, shall notify the Department of
14 Public Safety that:

15 a. the defendant was issued a traffic citation and
16 released upon personal recognizance after signing a
17 written promise to appear for arraignment as provided
18 for in the citation,

19 b. the defendant has failed to appear for arraignment
20 without good cause shown,

21 c. the defendant has not posted bail, paid a fine, or
22 made any other arrangement with the court to satisfy
23 the citation, and
24

1 d. the citation has not been satisfied as provided by
2 law.

3 Additionally, the court clerk shall request the Department of Public
4 Safety to either suspend the defendant's driving privilege and
5 driver license to operate a motor vehicle in this state, or notify
6 the defendant's home state and request suspension of the defendant's
7 driving privilege and driver license in accordance with the
8 provisions of the Nonresident Violator Compact. Such notice and
9 request shall be on a form approved or furnished by the Department
10 of Public Safety.

11 2. The court clerk shall not process the notification and
12 request provided for in paragraph 1 of this subsection if, with
13 respect to such charges:

14 a. the defendant was arraigned, posted bail, paid a fine,
15 was jailed, or otherwise settled the case, or

16 b. the defendant was not released upon personal
17 recognizance upon a signed written promise to appear
18 as provided for in this section or if released, was
19 not permitted to remain on such personal recognizance
20 for arraignment, or

21 c. the violation relates to parking or standing, or

22 d. a period of one hundred twenty (120) calendar days or
23 more has elapsed from the date the citation was issued
24 by the arresting officer.

1 F. Following receipt of the notice and request from the court
2 clerk for driving privilege and driver license suspension as
3 provided for in subsection E of this section, the Department of
4 Public Safety shall proceed as provided for in Section 1115.5 of
5 this title.

6 G. The municipal or district court clerk shall maintain a
7 record of each request for driving privilege and driver license
8 suspension submitted to the Department of Public Safety pursuant to
9 the provisions of this section. When the court or court clerk
10 receives appropriate bail or payment of the fine and costs, settles
11 the citation, makes other arrangements with the defendant, or
12 otherwise closes the case, the court clerk shall furnish proof
13 thereof to such defendant, if the defendant personally appears, or
14 shall mail such proof by first class mail, postage prepaid, to the
15 defendant at the address noted on the citation or at such other
16 address as is furnished by the defendant. Additionally, the court
17 or court clerk shall notify the home jurisdiction of the defendant
18 as listed on the citation, if such jurisdiction is a member of the
19 Nonresident Violator Compact, and shall, in all other cases, notify
20 the Department, of the resolution of the case. The form of proof
21 and the procedures for notification shall be approved by the
22 Department of Public Safety. Provided, however, the court or court
23 clerk's failure to furnish such proof or notice in the manner
24 provided for in this subsection shall in no event create any civil

1 liability upon the court, the court clerk, the State of Oklahoma or
2 any political subdivision thereof, or any state department or agency
3 or any employee thereof but duplicate proof shall be furnished to
4 the person entitled thereto upon request.

5 SECTION 5. AMENDATORY 22 O.S. 2001, Section 1115.3, as
6 amended by Section 5, Chapter 204, O.S.L. 2006 (22 O.S. Supp. 2008,
7 Section 1115.3), is amended to read as follows:

8 Section 1115.3 A. The court shall prescribe the amount of bail
9 for the following state traffic-related offenses:

- 10 1. Any felony;
- 11 2. Negligent homicide;
- 12 3. ~~Driving or being in actual physical control of~~ a motor
13 vehicle while impaired by or under the influence of alcohol or other
14 intoxicating substances;
- 15 4. Eluding or attempting to elude a law enforcement officer;
- 16 5. Driving while license is under suspension, revocation,
17 denial or cancellation;
- 18 6. Failure to stop or remain at the scene of an accident; and
- 19 7. Any other traffic violation for which a defendant is
20 delivered to the judge of the court as magistrate pursuant to the
21 provisions of Section 1115.2 of this title, or other law.

22 B. The amount of bail for an overweight offense shall be the
23 amount of fine and costs, including any penalty assessment provided
24 for in the Oklahoma Statutes and the fees provided for in Sections

1 1313.2, 1313.3, 1313.4 and 1313.5 of Title 20 of the Oklahoma
2 Statutes.

3 C. The amount of bail for other state traffic-related offenses
4 shall be the amount of fine and costs including any penalty
5 assessments provided for in the Oklahoma Statutes and the fees
6 provided for in Sections 1313.2, 1313.3, 1313.4 and 1313.5 of Title
7 20 of the Oklahoma Statutes.

8 D. The amount of bail for a state wildlife-related or water
9 safety-related offense shall be the amount of fine and costs
10 including any penalty assessment provided for in the Oklahoma
11 Statutes and the fees provided for in Sections 1313.2, 1313.3,
12 1313.4 and 1313.5 of Title 20 of the Oklahoma Statutes.

13 E. On or before September 1 of each year, the Administrative
14 Office of the Courts shall prepare a schedule of amounts to be
15 received as bail for each offense pursuant to subsections A, B, C
16 and D of this section and shall distribute the schedule to the
17 Department of Public Safety, each district court clerk in this state
18 and to other interested parties upon request.

19 F. The district court clerk, unless otherwise directed by the
20 court, shall accept bail or the payment of a fine and costs in the
21 form of currency or personal, cashier's, traveler's, certified or
22 guaranteed bank check, or postal or commercial money order for the
23 amount prescribed in this section for bail.

24

1 G. The district court clerk shall accept as bail a guaranteed
2 arrest bond certificate issued by a surety company, an automobile
3 club or trucking association, if:

4 1. The issuer is authorized to do business in this state by the
5 State Insurance Commissioner;

6 2. The certificate is issued to and signed by the arrested
7 person;

8 3. The certificate contains a printed statement that appearance
9 of such person is guaranteed and the issuer, in the event of failure
10 of such person to appear in court at the time of trial, will pay any
11 fine or forfeiture imposed; and

12 4. The limit provided on the certificate equals or exceeds the
13 amount of bail provided for in this section.

14 SECTION 6. AMENDATORY 47 O.S. 2001, Section 6-205, as
15 last amended by Section 17, Chapter 311, O.S.L. 2006 (47 O.S. Supp.
16 2008, Section 6-205), is amended to read as follows:

17 Section 6-205. A. The Department of Public Safety shall
18 immediately revoke the driving privilege of any person, whether
19 adult or juvenile, upon receiving a record of conviction in any
20 municipal, state or federal court within the United States of any of
21 the following offenses, when such conviction has become final:

22 1. Manslaughter or negligent homicide resulting from the
23 operation of a motor vehicle;

1 2. ~~Driving or being in actual physical control~~ of a motor
2 vehicle while under the influence of alcohol, any other intoxicating
3 substance, or the combined influence of alcohol and any other
4 intoxicating substance, any violation of paragraph 1, 2, 3 or 4 of
5 subsection A of Section 11-902 of this title or any violation of
6 Section 11-906.4 of this title. However, the Department shall not
7 additionally revoke the driving privileges of the person pursuant to
8 this subsection if the person's driving privilege has been revoked
9 because of a test result or test refusal pursuant to Section 753 or
10 754 of this title arising from the same circumstances which resulted
11 in the conviction unless the revocation because of a test result or
12 test refusal is set aside;

13 3. Any felony during the commission of which a motor vehicle is
14 used;

15 4. Failure to stop and render aid as required under the laws of
16 this state in the event of a motor vehicle accident resulting in the
17 death or personal injury of another;

18 5. Perjury or the making of a false affidavit or statement
19 under oath to the Department under the Uniform Vehicle Code or under
20 any other law relating to the ownership or operation of motor
21 vehicles;

22 6. A misdemeanor or felony conviction for unlawfully
23 possessing, distributing, dispensing, manufacturing, trafficking,
24 cultivating, selling, transferring, attempting or conspiring to

1 possess, distribute, dispense, manufacture, traffic, sell, or
2 transfer a controlled dangerous substance as defined in the Uniform
3 Controlled Dangerous Substances Act;

4 7. Failure to pay for gasoline pumped into a vehicle pursuant
5 to Section 1740 of Title 21 of the Oklahoma Statutes; or

6 8. A misdemeanor conviction for a violation of Section 1465 of
7 Title 21 of the Oklahoma Statutes.

8 B. The first license revocation under any provision of this
9 section, except for paragraph 2, 6, or 7 of subsection A of this
10 section, shall be for a period of one (1) year. Such period shall
11 not be modified.

12 C. A license revocation under any provision of this section,
13 except for paragraph 2, 6, or 7 of subsection A of this section,
14 shall be for a period of three (3) years if a prior revocation under
15 this section, except under paragraph 2 of subsection A of this
16 section, commenced within the preceding five-year period as shown by
17 the Department's record. Such period shall not be modified.

18 D. The period of license revocation under paragraph 2 or 6 of
19 subsection A of this section shall be governed by the provisions of
20 Section 6-205.1 of this title.

21 E. The first license revocation under paragraph 7 of subsection
22 A of this section shall be for a period of six (6) months. A second
23 or subsequent license revocation under paragraph 7 of subsection A

24

1 of this section shall be for a period of one (1) year. Such periods
2 shall not be modified.

3 SECTION 7. AMENDATORY 47 O.S. 2001, Section 6-205.2, as
4 last amended by Section 19, Chapter 311, O.S.L. 2006 (47 O.S. Supp.
5 2008, Section 6-205.2), is amended to read as follows:

6 Section 6-205.2 A. As used in this section, "conviction"
7 means:

- 8 1. A nonvacated adjudication of guilt;
- 9 2. A determination that a person has violated or failed to
10 comply with this section in any court or by the Department of Public
11 Safety following an administrative determination;
- 12 3. A nonvacated forfeiture of bail or collateral deposited to
13 secure a person's appearance in court;
- 14 4. A plea of guilty or nolo contendere accepted by the court;
- 15 5. The payment of any fine or court costs; or
- 16 6. A violation of a condition of release without bail,
17 regardless of whether or not the penalty is rebated, suspended or
18 probated.

19 B. The Department of Public Safety shall disqualify any person
20 from operating a Class A, B or C commercial motor vehicle for a
21 period of not less than one (1) year upon receiving a record of
22 conviction of any of the following disqualifying offenses, when the
23 conviction has become final:

24

1 1. ~~Driving, or operating or being in actual physical control of~~
2 a Class A, B or C commercial motor vehicle while having a blood or
3 breath alcohol concentration, as defined in Section 756 of this
4 title, or as defined by the state in which the arrest occurred, of
5 four-hundredths (0.04) or more;

6 2. Refusing to submit to a test for determination of alcohol
7 concentration, as required by Section 751 of this title, or as
8 required by the state in which the arrest occurred, while operating
9 a Class A, B or C commercial motor vehicle, or if the person is the
10 holder of a commercial driver license, committing the offense while
11 operating any vehicle;

12 3. ~~Driving or being in actual physical control of~~ a Class A, B
13 or C commercial motor vehicle while under the influence of alcohol
14 or any other intoxicating substance or the combined influence of
15 alcohol and any other intoxicating substance, or if the person is
16 the holder of a commercial driver license, committing the offense
17 while operating any vehicle. Provided, the Department shall not
18 additionally disqualify, pursuant to this subsection, if the
19 person's driving privilege has been disqualified in this state
20 because of a test result or test refusal pursuant to paragraph 1 or
21 2 of this subsection as a result of the same violation arising from
22 the same incident;

23 4. Knowingly leaving the scene of a collision which occurs
24 while operating a Class A, B or C commercial motor vehicle, or if

1 the person is the holder of a commercial driver license, committing
2 the offense while operating any vehicle;

3 5. Any felony during the commission of which a Class A, B or C
4 commercial motor vehicle is used, except a felony involving the
5 manufacture, distribution or dispensation of a controlled dangerous
6 substance, or if the person is the holder of a commercial driver
7 license, committing the offense while operating any vehicle;

8 6. Operating a commercial motor vehicle while the commercial
9 driving privilege is revoked, suspended, canceled, denied, or
10 disqualified; or

11 7. Manslaughter homicide, or negligent homicide occurring as a
12 direct result of negligent operation of a commercial motor vehicle,
13 or, if the person is the holder of a commercial driver license,
14 committing the offense while operating any vehicle.

15 C. The Department of Public Safety shall disqualify any person
16 from operating a Class A, B or C commercial motor vehicle for a
17 period of not less than three (3) years upon receiving a record of
18 conviction of any of the disqualifying offenses described in
19 subsection B of this section, committed in connection with the
20 operation of a motor vehicle which is required to be placarded for
21 hazardous materials under 49 C.F.R., Part 172, subpart F, when the
22 conviction has become final.

23 D. The Department of Public Safety shall disqualify any person
24 from operating a Class A, B or C commercial motor vehicle for life

1 upon receiving a record of conviction in any court of any of the
2 disqualifying offenses described in subsection B of this section
3 after a former conviction of any of the following disqualifying
4 offenses, when the second conviction has become final.

5 The Department of Public Safety may promulgate rules
6 establishing conditions under which a disqualification for life
7 pursuant to the provisions of this subsection may be reduced to a
8 period of not less than ten (10) years provided a previous lifetime
9 disqualification has not been reduced.

10 E. The Department of Public Safety shall disqualify any person
11 from operating a Class A, B or C commercial motor vehicle for life
12 upon receiving a record of conviction for any felony related to the
13 manufacture, distribution or dispensation of a controlled dangerous
14 substance in the commission of which a Class A, B or C commercial
15 motor vehicle is used, or if the person is the holder of a
16 commercial driver license, committing the offense while operating
17 any vehicle, when the conviction has become final.

18 F. The Department of Public Safety shall disqualify any person
19 from operating a Class A, B or C commercial motor vehicle for sixty
20 (60) days upon receiving a record of a second conviction of the
21 person for a serious traffic offense arising out of separate
22 transactions or occurrences within a three-year period, when the
23 convictions have become final. The Department of Public Safety
24 shall disqualify any person from operating a Class A, B or C

1 commercial motor vehicle for one hundred twenty (120) days upon
2 receiving a record of a third conviction of a person for a serious
3 traffic offense arising out of separate transactions or occurrences
4 within a three-year period, when the convictions have become final;
5 provided, the one-hundred-twenty-day period shall run in addition to
6 and shall not run concurrently with any other period
7 disqualification imposed pursuant to this subsection. As used in
8 this subsection, "serious traffic offense" shall mean any of the
9 following offenses committed while operating a commercial motor
10 vehicle:

- 11 1. Speeding fifteen (15) miles per hour or more over the limit;
- 12 2. Reckless driving;
- 13 3. Any traffic offense committed that results in or in
14 conjunction with a motor vehicle collision resulting in a fatality;
- 15 4. Erratic or unsafe lane changes;
- 16 5. Following too close;
- 17 6. Failure to obtain a commercial driver license;
- 18 7. Failure to have in possession of the person a commercial
19 driver license; or
- 20 8. Failure to have:
 - 21 a. the proper class of commercial driver license for the
22 class of vehicle being operated,

23
24

- 1 b. the proper endorsement or endorsements for the type of
2 vehicle being operated, including but not limited to,
3 passengers or type of cargo being transported, or
4 c. both proper class and proper endorsement, as provided
5 in subparagraphs a and b of this paragraph.

6 G. Upon the receipt of a person's record of conviction of
7 violating a lawful out-of-service order, except as provided in
8 subsection H of this section, when the conviction becomes final, the
9 Department shall disqualify the driving privilege of the person as
10 follows:

- 11 1. The first conviction shall result in a ninety-day
12 disqualification;
13 2. The second conviction within ten (10) years shall result in
14 a one-year disqualification; and
15 3. The third or subsequent conviction within ten (10) years
16 shall result in a three-year disqualification.

17 H. Upon the receipt of a person's record of conviction of
18 violating a lawful out-of-service order while transporting hazardous
19 materials required to be placarded under the Hazardous Materials
20 Transportation Act (49 P. app. 1801-1813), or while operating motor
21 vehicles designed for transport of more than fifteen passengers,
22 including the driver, when the conviction becomes final, the
23 Department shall disqualify the driving privilege of the person as
24 follows:

1 1. The first conviction shall result in a one-year
2 disqualification; and

3 2. The second or subsequent conviction within ten (10) years
4 shall result in a three-year disqualification.

5 I. Upon determination by the Department that fraudulent
6 information was used to apply for or obtain a Class A, B or C driver
7 license, the Department shall disqualify the driving privilege of
8 the applicant or licensee for a period of sixty (60) days.

9 J. Any person who drives a Class A, B or C commercial motor
10 vehicle on any public roads, streets, highways, turnpikes or any
11 other public place of this state at a time when the person has been
12 disqualified or when the privilege to do so is canceled, denied,
13 suspended or revoked shall be guilty of a misdemeanor and upon
14 conviction shall be punished by a fine of not less than One Hundred
15 Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00),
16 or by imprisonment for not more than one (1) year, or by both such
17 fine and imprisonment. Each act of driving as prohibited shall
18 constitute a separate offense.

19 K. Upon the receipt of the record of a conviction of a person
20 of a railroad highway grade crossing offense in a commercial motor
21 vehicle, pursuant to Sections 11-701 or 11-702 of this title or
22 Section 11-1115 of this title, or upon receipt of an equivalent
23 conviction from any state, when the conviction becomes final, the
24

1 Department shall disqualify the driving privileges of the person
2 convicted as follows:

3 1. The first conviction shall result in disqualification for
4 sixty (60) days;

5 2. The second conviction within three (3) years shall result in
6 disqualification for one hundred twenty (120) days; and

7 3. The third or subsequent conviction within three (3) years
8 shall result in disqualification for one (1) year.

9 L. The Department, upon receipt of a written notice of
10 immediate disqualification issued by the Federal Motor Carrier
11 Safety Administration under 49 CFR 383.52, shall immediately
12 disqualify the person's commercial driving privilege for the period
13 of time specified on the written notice.

14 M. The periods of disqualification as defined by this section
15 shall not be modified. A person may not be granted driving
16 privileges to operate a Class A, B or C commercial vehicle until the
17 disqualification is reinstated.

18 N. When any record of conviction, as specified in this section,
19 is received by the Department and pertains to a nonresident operator
20 of a Class A, B or C commercial motor vehicle, or if the nonresident
21 operator is the holder of a commercial driver license, a record of
22 the conviction pertaining to the nonresident operator of any
23 vehicle, the Department shall not disqualify the person and shall
24 report the conviction to the licensing jurisdiction in which the

1 license of the nonresident to operate the commercial vehicle was
2 issued.

3 O. Any person who is disqualified from driving under the
4 provisions of this section shall have the right of appeal, as
5 provided in Section 6-211 of this title.

6 SECTION 8. AMENDATORY 47 O.S. 2001, Section 11-902, as
7 last amended by Section 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp.
8 2008, Section 11-902), is amended to read as follows:

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

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

19 2. Is under the influence of alcohol;

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

23

24

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

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

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

20 2. Any person who, within ten (10) years after a previous
21 conviction of a violation of this section or a violation pursuant to
22 the provisions of any law of another state prohibiting the offense
23 provided in subsection A of this section, is convicted of a second
24 offense pursuant to the provisions of this section or has a prior

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

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

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

24

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

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

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

22 4. Any person who is convicted of a third or subsequent felony
23 offense pursuant to the provisions of this section shall participate
24 in an assessment and evaluation by an assessment agency or

1 assessment personnel certified by the Department of Mental Health
2 and Substance Abuse Services pursuant to Section 3-460 of Title 43A
3 of the Oklahoma Statutes and shall be sentenced to:

4 a. follow all recommendations made in the assessment and
5 evaluation for treatment at the defendant's expense,
6 followed by not less than one (1) year of supervision
7 and periodic testing at the defendant's expense, four
8 hundred eighty (480) hours of community service, and
9 use of an ignition interlock device for a minimum of
10 thirty (30) days, or

11 b. placement in the custody of the Department of
12 Corrections for not less than one (1) year and not to
13 exceed ten (10) years and a fine of not more than Five
14 Thousand Dollars (\$5,000.00), or

15 c. treatment, imprisonment and a fine within the
16 limitations prescribed in subparagraphs a and b of
17 this paragraph.

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

21 5. Any person who, within ten (10) years after a previous
22 conviction of a violation of murder in the second degree or
23 manslaughter in the first degree in which the death was caused as a
24 result of driving under the influence of alcohol or other

1 intoxicating substance, is convicted of a violation of this section
2 shall be deemed guilty of a felony.

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

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

14 D. Any person who is convicted of a violation of driving under
15 the influence with a blood or breath alcohol concentration of
16 fifteen-hundredths (0.15) or more pursuant to this section shall be
17 deemed guilty of aggravated driving under the influence. A person
18 convicted of aggravated driving under the influence shall
19 participate in an assessment and evaluation by an assessment agency
20 or assessment personnel certified by the Department of Mental Health
21 and Substance Abuse Services pursuant to Section 3-460 of Title 43A
22 of the Oklahoma Statutes and shall comply with all recommendations
23 for treatment. Such person shall be sentenced to not less than one
24 (1) year of supervision and periodic testing at the defendant's

1 expense, four hundred eighty (480) hours of community service, and
2 an ignition interlock device for a minimum of thirty (30) days.
3 Nothing in this subsection shall preclude the defendant from being
4 charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of
5 subsection C of this section.

6 E. When a person is sentenced to imprisonment in the custody of
7 the Department of Corrections, the person shall be processed through
8 the Lexington Assessment and Reception Center or at a place
9 determined by the Director of the Department of Corrections. The
10 Department of Corrections shall classify and assign the person to
11 one or more of the following:

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

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

17 F. The Department of Public Safety is hereby authorized to
18 reinstate any suspended or revoked driving privilege when the person
19 meets the statutory requirements which affect the existing driving
20 privilege.

21 G. Any person who is found guilty of a violation of the
22 provisions of this section shall be ordered to participate in, prior
23 to sentencing, an alcohol and drug substance abuse evaluation and
24 assessment program offered by a certified assessment agency or

1 certified assessor for the purpose of evaluating and assessing the
2 receptivity to treatment and prognosis of the person. The court
3 shall order the person to reimburse the agency or assessor for the
4 evaluation and assessment. The fee for an evaluation and assessment
5 shall be the amount provided in subsection C of Section 3-460 of
6 Title 43A of the Oklahoma Statutes. The evaluation and assessment
7 shall be conducted at a certified assessment agency, the office of a
8 certified assessor or at another location as ordered by the court.
9 The agency or assessor shall, within seventy-two (72) hours from the
10 time the person is evaluated and assessed, submit a written report
11 to the court for the purpose of assisting the court in its final
12 sentencing determination. If such report indicates that the
13 evaluation and assessment shows that the defendant would benefit
14 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
15 course or a treatment program or both, the court shall, as a
16 condition of any sentence imposed, including deferred and suspended
17 sentences, require the person to follow all recommendations
18 identified by the evaluation and assessment and ordered by the
19 court. No person, agency or facility operating an evaluation and
20 assessment program certified by the Department of Mental Health and
21 Substance Abuse Services shall solicit or refer any person evaluated
22 and assessed pursuant to this section for any treatment program or
23 substance abuse service in which such person, agency or facility has
24 a vested interest; however, this provision shall not be construed to

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

23 H. Any person who is found guilty of a violation of the
24 provisions of this section may be required by the court to attend a

1 victims impact panel program, if such a program is offered in the
2 county where the judgment is rendered, and to pay a fee, not less
3 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars
4 (\$25.00) as set by the governing authority of the program and
5 approved by the court, to the program to offset the cost of
6 participation by the defendant, if in the opinion of the court the
7 defendant has the ability to pay such fee.

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

12 J. Any person who, within ten (10) years after a previous
13 conviction of a violation of this section or a violation pursuant to
14 the provisions of law of another state prohibiting the offense
15 provided in subsection A of this section or a violation of a
16 municipal ordinance prohibiting the offense provided in subsection A
17 of this section, pleads guilty or nolo contendere or is convicted of
18 a violation of this section shall not be required to undergo the
19 alcohol and drug substance evaluation program required by subsection
20 G of this section. The court shall, as a condition of any sentence
21 imposed, including deferred and suspended sentences, require the
22 person to participate in and successfully complete all
23 recommendations from the evaluation, such as an alcohol and drug
24

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

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

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

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

18 SECTION 9. AMENDATORY 47 O.S. 2001, Section 11-906.2, is
19 amended to read as follows:

20 Section 11-906.2 The purpose of this act is to reduce the
21 incidence of persons who drive ~~or are in actual physical control of~~
22 a motor vehicle while under the influence of alcohol or other
23 intoxicating substances.

24

1 SECTION 10. AMENDATORY 47 O.S. 2001, Section 11-906.3,
2 is amended to read as follows:

3 Section 11-906.3 A. The State Department of Education shall
4 develop and administer appropriate driver education programs to be
5 conducted in all of the schools of this state to increase awareness
6 of the dangers of drinking and driving.

7 B. 1. In order to provide education and instruction to all
8 applicants for an original Oklahoma driver license, the Oklahoma
9 Driver's Manual, published and distributed by the Department of
10 Public Safety pursuant to Section 2-114 of this title, shall contain
11 accurate information on:

12 a. the hazards of driving while under the influence of
13 alcohol or other intoxicating substances, and

14 b. the legal and financial consequences resulting from
15 violations of this state's laws prohibiting the
16 operation ~~or actual physical control~~ of a motor
17 vehicle while under the influence of alcohol or other
18 intoxicating substances.

19 2. In addition to the subjects set forth in Section 6-110 of
20 this title, the written examination administered by the Department
21 of Public Safety to every applicant for an original Oklahoma driver
22 license shall contain questions on the subjects listed in this
23 subsection.

24

1 SECTION 11. AMENDATORY 47 O.S. 2001, Section 11-906.4,
2 is amended to read as follows:

3 Section 11-906.4 A. It is unlawful, and punishable as provided
4 in subsection B of this section, for any person under twenty-one
5 (21) years of age to drive, or operate, ~~or be in actual physical~~
6 ~~control of~~ a motor vehicle within this state who:

7 1. Has any measurable quantity of alcohol in the person's blood
8 or breath at the time of a test administered within two (2) hours
9 after an arrest of the person;

10 2. Exhibits evidence of being under the influence of any other
11 intoxicating substance as shown by analysis of a specimen of the
12 person's blood, breath, saliva, or urine in accordance with the
13 provisions of Sections 752 and 759 of this title; or

14 3. Exhibits evidence of the combined influence of alcohol and
15 any other intoxicating substance.

16 B. Any person under twenty-one (21) years of age who violates
17 any provision of this section shall be subject to the seizure of the
18 driver license of that person at the time of arrest or detention and
19 the person, upon conviction, shall be guilty of operating ~~or being~~
20 ~~in actual physical control of~~ a motor vehicle while under the
21 influence while under age and shall be punished:

22 1. For a first offense, by a fine of not less than One Hundred
23 Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or
24 by assignment to and completion of twenty (20) hours of community

1 service, or by requiring the person to attend and complete a
2 treatment program, or by any combination of fine, community service,
3 or treatment;

4 2. Upon a second conviction, by:

5 a. assignment to and completion of not less than two
6 hundred forty (240) hours of community service, and

7 b. the requirement, after the conclusion of the mandatory
8 revocation period, to install an ignition interlock
9 device for a period of not less than thirty (30) days,
10 as ordered by the court, on every vehicle owned by the
11 person and on the vehicle regularly operated by the
12 person, if such vehicle is not owned by the person,
13 pursuant to Section 754.1 or 755 of this title. The
14 installation of an ignition interlock device, as
15 required by this subparagraph, shall not be construed
16 to authorize the person to drive unless the person is
17 otherwise eligible to drive.

18 In addition, a second conviction may be punished by a fine of not
19 less than One Hundred Dollars (\$100.00) nor more than One Thousand
20 Dollars (\$1,000.00), or by requiring the person to attend and
21 complete a treatment program, as recommended by the assessment
22 required pursuant to subparagraph c of paragraph 2 of subsection D
23 of this section, or by both; or

24 3. Upon a third or subsequent conviction, by:

- 1 a. assignment to and completion of not less than four
2 hundred eighty (480) hours of community service, and
3 b. the requirement, after the conclusion of the mandatory
4 revocation period, to install an ignition interlock
5 device for a period of not less than thirty (30) days,
6 as ordered by the court, on every vehicle owned by the
7 person and on the vehicle regularly operated by the
8 person, if such vehicle is not owned by the person,
9 pursuant to Section 754.1 or 755 of this title. The
10 installation of an ignition interlock device, as
11 required by this subparagraph, shall not be construed
12 to authorize the person to drive unless the person is
13 otherwise eligible to drive.

14 In addition, a third or subsequent conviction may be punished by a
15 fine of not less than One Hundred Dollars (\$100.00) nor more than
16 Two Thousand Dollars (\$2,000.00), or by requiring the person to
17 attend and complete a treatment program, as recommended by the
18 assessment required pursuant to subparagraph c of paragraph 2 of
19 subsection D of this section, or by both.

20 C. The court may assess additional community service hours in
21 lieu of any fine specified in this section.

22 D. In addition to any penalty or condition imposed pursuant to
23 the provisions of this section, the person shall be subject to:

- 24 1. Upon a first conviction:

1 a. the cancellation or denial of driving privileges as
2 ordered by the court pursuant to Section 6-107.1 of
3 this title, and

4 b. the mandatory revocation of driving privileges
5 pursuant to Section 6-205.1, 753 or 754 of this title,
6 which revocation period may be modified as provided by
7 law; and

8 2. Upon a second or subsequent conviction:

9 a. the cancellation or denial of driving privileges for a
10 period of two (2) years or until the person attains
11 eighteen (18) years of age, whichever is longer,
12 pursuant to subsection B of Section 6-107.2 of this
13 title,

14 b. the mandatory revocation of driving privileges
15 pursuant to Section 6-205.1, 753 or 754 of this title,
16 which period may be modified as provided by law, and

17 c. an assessment of the person's degree of alcohol abuse,
18 in the same manner as prescribed in subsection H of
19 Section 11-902 of this title, which may result in
20 treatment as deemed appropriate by the court.

21 E. Nothing in this section shall be construed to prohibit the
22 filing of charges pursuant to Section 761 or 11-902 of this title
23 when the facts warrant.

24 F. As used in this section:

1 1. The term "conviction" includes a juvenile delinquency
2 adjudication by a court; and

3 2. The term "revocation" includes the cancellation or denial of
4 driving privileges by the Department.

5 SECTION 12. AMENDATORY 47 O.S. 2001, Section 751, as
6 last amended by Section 4, Chapter 173, O.S.L. 2006 (47 O.S. Supp.
7 2008, Section 751), is amended to read as follows:

8 Section 751. A. 1. Any person who operates a motor vehicle
9 upon the public roads, highways, streets, turnpikes or other public
10 place or upon any private road, street, alley or lane which provides
11 access to one or more single_ or multi-family dwellings within this
12 state shall be deemed to have given consent to a test or tests of
13 such person's blood or breath, for the purpose of determining the
14 alcohol concentration as defined in Section 756 of this title, and
15 such person's blood, saliva or urine for determining the presence or
16 concentration of any other intoxicating substance therein as defined
17 in this section, if arrested for any offense arising out of acts
18 alleged to have been committed while the person was operating ~~or in~~
19 ~~actual physical control of~~ a motor vehicle upon the public roads,
20 highways, streets, turnpikes or other public place or upon any
21 private road, street, alley or lane which provides access to one or
22 more single_ or multi-family dwellings while under the influence of
23 alcohol or other intoxicating substance, or the combined influence
24 of alcohol and any other intoxicating substance, or if the person is

1 involved in a traffic accident that resulted in the immediate death
2 or serious injury of any person and is removed from the scene of the
3 accident to a hospital or other health care facility outside the
4 State of Oklahoma before a law enforcement officer can effect an
5 arrest.

6 2. A law enforcement officer, having reasonable grounds to
7 believe that such person was operating ~~or in actual physical control~~
8 of a motor vehicle while under the influence may direct the
9 administration of or administer the test or tests.

10 As used in this title, the term "other intoxicating substance"
11 shall mean any controlled dangerous substance as defined in the
12 Uniform Controlled Dangerous Substances Act and any other substance,
13 other than alcohol, which is capable of being ingested, inhaled,
14 injected or absorbed into the human body and is capable of adversely
15 affecting the central nervous system, vision, hearing or other
16 sensory or motor functions.

17 B. The law enforcement agency by which the arresting officer is
18 employed may designate, in accordance with the rules of the Board of
19 Tests for Alcohol and Drug Influence, hereinafter referred to as the
20 Board, whether blood or breath is to be tested for the alcohol
21 concentration thereof, and whether blood, saliva or urine is to be
22 tested for the presence or concentration of any other intoxicating
23 substance therein.

24

1 In the event the law enforcement agency does not designate the
2 test to be administered, breath shall be the substance tested for
3 alcohol concentration. Blood may also be tested to determine the
4 alcohol concentration thereof in the event that breath cannot be
5 tested to determine the alcohol concentration thereof because of the
6 lack of an approved device or qualified person to administer a
7 breath test or because such breath test for any other reason cannot
8 be administered in accordance with the rules of the Board.

9 In the event the law enforcement agency does not designate the
10 test to be administered, blood, saliva or urine shall be the
11 substance tested for the presence or concentration of any other
12 intoxicating substance or the combination of alcohol and any other
13 intoxicating substance.

14 C. In the event the person is incapable of submitting to and
15 successfully completing, by reason of illness or injury or other
16 physical disability, the test to be administered, an alternate test
17 may be administered in accordance with the rules of the Board.

18 D. Any person who is unconscious or otherwise incapable of
19 refusing to submit to a test of such person's blood or breath to
20 determine the alcohol concentration thereof, or to a test of such
21 person's blood, saliva or urine to determine the presence or
22 concentration of any other intoxicating substance therein, shall be
23 deemed not to have withdrawn the consent provided by subsection A of
24 this section, and such test may be administered as provided herein.

1 An unconscious person who has been issued a citation by a law
2 enforcement officer for one of the offenses listed in subsection A
3 of this section is arrested for purposes of this section. The
4 arresting officer must leave a copy of the citation with the
5 arrested person which may be accomplished by handing it to the
6 arrested person, or by leaving it with the personal effects of the
7 arrested party, so as to inform the unconscious person of the
8 arrest.

9 Any person who has been arrested for one of the offenses listed
10 in subsection A of this section who is unconscious or injured and
11 who requires immediate medical treatment as determined by a treating
12 physician may be released on the person's own recognizance for
13 medical reasons by the arresting officer. The arresting officer who
14 releases an arrested person on the person's own recognizance must
15 indicate the release on the face of the citation. Any person
16 released on his or her own recognizance for medical reasons shall
17 remain at liberty pending the filing of charges.

18 E. In addition to any test designated by the arresting officer,
19 the arrested person may also designate any additional test to be
20 administered to determine the concentration of alcohol, or the
21 presence or concentration of any other intoxicating substance or the
22 combination of alcohol and any other intoxicating substance. The
23 cost of such additional test shall be at the expense of the arrested
24 person.

1 A sufficient quantity of any specimen obtained at the
2 designation of the arrested person shall be available to the law
3 enforcement agency employing the arresting officer. Such specimens
4 shall be treated in accordance with the rules applicable to the
5 specimens obtained by an arresting officer.

6 F. When a law enforcement officer has determined that the blood
7 alcohol content of an individual is to be tested for the presence or
8 concentration of alcohol, other intoxicating substance, or the
9 combination of alcohol and any other intoxicating substance, the law
10 enforcement officer shall inform the individual to be tested that
11 the withdrawal of blood shall only be performed by certain medical
12 personnel as provided for in Section 752 of this title.

13 SECTION 13. AMENDATORY 47 O.S. 2001, Section 752, as
14 last amended by Section 5, Chapter 173, O.S.L. 2006 (47 O.S. Supp.
15 2008, Section 752), is amended to read as follows:

16 Section 752. A. Only a licensed medical doctor, licensed
17 osteopathic physician, licensed chiropractic physician, registered
18 nurse, licensed practical nurse, physician's assistant, certified by
19 the State Board of Medical Licensure and Supervision, an employee of
20 a hospital or other health care facility authorized by the hospital
21 or health care facility to withdraw blood, or other qualified person
22 authorized by the Board of Tests for Alcohol and Drug Influence
23 acting at the request of a law enforcement officer may withdraw
24 blood for purpose of having a determination made of its

1 concentration of alcohol or the presence or concentration of other
2 intoxicating substance. Only qualified persons authorized by the
3 Board may collect breath, saliva or urine, or administer tests of
4 breath under the provisions of this title.

5 B. If the person authorized to withdraw blood as specified in
6 subsection A of this section is presented with a written statement:

7 1. Authorizing blood withdrawal signed by the person whose
8 blood is to be withdrawn;

9 2. Signed by a duly authorized peace officer that the person
10 whose blood is to be withdrawn has agreed to the withdrawal of
11 blood;

12 3. Signed by a duly authorized peace officer that the person
13 whose blood is to be withdrawn has been placed under arrest and that
14 the officer has probable cause to believe that the person, while
15 intoxicated, has operated a motor vehicle in such manner as to have
16 caused the death or serious physical injury of another person, or
17 the person has been involved in a traffic accident and has been
18 removed from the scene of the accident that resulted in the death or
19 great bodily injury, as defined in subsection B of Section 646 of
20 Title 21 of the Oklahoma Statutes, of any person to a hospital or
21 other health care facility outside the State of Oklahoma before the
22 law enforcement officer was able to effect an arrest for such
23 offense; or

24

1 4. In the form of an order from a district court that blood be
2 withdrawn, the person authorized to withdraw the blood and the
3 hospital or other health care facility where the withdrawal occurs
4 may rely on such a statement or order as evidence that the person
5 has consented to or has been required to submit to the clinical
6 procedure and shall not require the person to sign any additional
7 consent or waiver form. In such a case, the person authorized to
8 perform the procedure, the employer of such person, and the hospital
9 or other health care facility shall not be liable in any action
10 alleging lack of consent or lack of informed consent.

11 C. No person specified in subsection A of this section, no
12 employer of such person, and no hospital or other health care
13 facility where blood is withdrawn shall incur any civil or criminal
14 liability as a result of the proper withdrawal of blood when acting
15 at the request of a law enforcement officer by the provisions of
16 Section 751 or 753 of this title, or when acting in reliance upon a
17 signed statement or court order as provided in this section, if the
18 act is performed in a reasonable manner according to generally
19 accepted clinical practice. No person specified in subsection A of
20 this section shall incur any civil or criminal liability as a result
21 of the proper collection of breath, saliva or urine when acting at
22 the request of a law enforcement officer under the provisions of
23 Section 751 or 753 of this title or when acting pursuant to a court
24 order.

1 D. The blood, breath, saliva or urine specimens obtained shall
2 be tested by the appropriate test as determined by the Board, or
3 tested by a laboratory that is exempt from the Board rules pursuant
4 to Section 759 of this title, to determine the alcohol concentration
5 thereof, or the presence and concentration of any other intoxicating
6 substance which might have affected the ability of the person tested
7 to operate a motor vehicle safely.

8 E. When blood is withdrawn or saliva or urine is collected for
9 testing of its alcohol concentration or other intoxicating substance
10 presence or concentration, at the request of a law enforcement
11 officer, a sufficient quantity of the same specimen shall be
12 obtained to enable the tested person, at his or her own option and
13 expense, to have an independent analysis made of such specimen. The
14 excess blood, saliva or urine specimen shall be retained by a
15 laboratory approved by the Board, in accordance with the rules and
16 regulations of the Board, or by a laboratory that is exempt from the
17 Board rules pursuant to Section 759 of this title, for sixty (60)
18 days from the date of collection. At any time within that period,
19 the tested person or his or her attorney may direct that such blood,
20 saliva or urine specimen be sent or delivered to a laboratory of his
21 or her own choosing and approved by the Board for an independent
22 analysis. Neither the tested person, nor any agent of such person,
23 shall have access to the additional blood, saliva or urine specimen
24 prior to the completion of the independent analysis, except the

1 analyst performing the independent analysis and agents of the
2 analyst.

3 F. When a test of breath is performed for the purpose of
4 determining the alcohol concentration thereof, except when such test
5 is performed by means of an automated analyzer as designated by the
6 Board, a sufficient quantity of breath, or of the alcohol content of
7 a fixed or measured quantity of breath, shall be obtained, in
8 accordance with the rules and regulations of the Board, to enable
9 the tested person, at his or her own option and expense, to have an
10 independent analysis made of such specimen. The excess specimen of
11 breath, or of its alcohol content, shall be retained by the law
12 enforcement agency employing the arresting officer, in accordance
13 with the rules and regulations of the Board, for sixty (60) days
14 from the date of collection. At any time within that period, the
15 tested person, or his or her attorney, may direct that such specimen
16 be sent or delivered to a laboratory of his or her own choosing and
17 approved by the Board for an independent analysis. Neither the
18 tested person, nor any agent of such person, shall have access to
19 the additional specimen of breath, or of its alcohol content, prior
20 to the completion of the independent analysis thereof, except the
21 analyst performing the independent analysis and agents of the
22 analyst.

23 G. The costs of collecting blood, breath, saliva or urine
24 specimens for the purpose of determining the alcohol or other

1 intoxicating substance thereof, by or at the direction of a law
2 enforcement officer, shall be borne by the law enforcement agency
3 employing such officer. The cost of collecting, retaining and
4 sending or delivering to an independent laboratory the excess
5 specimens of blood, breath, saliva or urine for independent analysis
6 at the option of the tested person shall also be borne by such law
7 enforcement agency. The cost of the independent analysis of such
8 specimen of blood, breath, saliva or urine shall be borne by the
9 tested person at whose option such analysis is performed. The
10 tested person, or his or her agent, shall make all necessary
11 arrangements for the performance of such independent analysis other
12 than the forwarding or delivery of such specimen.

13 H. Tests of blood or breath for the purpose of determining the
14 alcohol concentration thereof, and tests of blood, saliva or urine
15 for the purpose of determining the presence or concentration of any
16 other intoxicating substance therein, under the provisions of this
17 title, whether administered by or at the direction of a law
18 enforcement officer or administered independently, at the option of
19 the tested person, on the excess specimen of such person's blood,
20 breath, saliva or urine, to be considered valid and admissible in
21 evidence under the provisions of this title, shall have been
22 administered or performed in accordance with the rules and
23 regulations of the Board, or performed by a laboratory that is
24 exempt from the Board rules pursuant to Section 759 of this title.

1 I. Any person who has been arrested for any offense arising out
2 of acts alleged to have been committed while the person was
3 operating ~~or in actual physical control of~~ a motor vehicle while
4 under the influence of alcohol, any other intoxicating substance or
5 the combined influence of alcohol and any other intoxicating
6 substance who is not requested by a law enforcement officer to
7 submit to a test shall be entitled to have an independent test of
8 his or her blood, breath, saliva or urine which is appropriate as
9 determined by the Board for the purpose of determining its alcohol
10 concentration or the presence or concentration of any other
11 intoxicating substance therein, performed by a person of his or her
12 own choosing who is qualified as stipulated in this section. The
13 arrested person shall bear the responsibility for making all
14 necessary arrangements for the administration of such independent
15 test and for the independent analysis of any specimens obtained, and
16 bear all costs thereof. The failure or inability of the arrested
17 person to obtain an independent test shall not preclude the
18 admission of other competent evidence bearing upon the question of
19 whether such person was under the influence of alcohol, or any other
20 intoxicating substance or the combined influence of alcohol and any
21 other intoxicating substance.

22 J. Any agency or laboratory certified by the Board or any
23 agency or laboratory that is exempt from the Board rules pursuant to
24 Section 759 of this title, which analyses breath, blood, or urine

1 shall make available a written report of the results of the test
2 administered by or at the direction of the law enforcement officer
3 to:

- 4 1. The tested person, or his or her attorney;
- 5 2. The Commissioner of Public Safety; and
- 6 3. The Fatality Analysis Reporting System (FARS) analyst of the
7 state, upon request.

8 The results of the tests provided for in this title shall be
9 admissible in civil actions.

10 SECTION 14. AMENDATORY 47 O.S. 2001, Section 753, as
11 amended by Section 6, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2008,
12 Section 753), is amended to read as follows:

13 Section 753. If a conscious person under arrest refuses to
14 submit to testing of his or her blood or breath for the purpose of
15 determining the alcohol concentration thereof, or to a test of his
16 or her blood, saliva or urine for the purpose of determining the
17 presence or concentration of any other intoxicating substance, or
18 the combined influence of alcohol and any other intoxicating
19 substance, none shall be given, unless the investigating officer has
20 probable cause to believe that the person under arrest, while
21 intoxicated, has operated the motor vehicle in such a manner as to
22 have caused the death or serious physical injury of any other person
23 or persons. In such event, such test otherwise authorized by law
24 may be made in the same manner as if a search warrant had been

1 issued for such test or tests. The sample shall be taken in a
2 medically acceptable manner at a hospital or other suitable health
3 care facility. The Commissioner of Public Safety, upon the receipt
4 of a sworn report of the law enforcement officer that the officer
5 had reasonable grounds to believe the arrested person had been
6 driving ~~or was in actual physical control of~~ a motor vehicle upon
7 the public roads, highways, streets, turnpikes or other public place
8 of this state while under the influence of alcohol, any other
9 intoxicating substance, or the combined influence of alcohol and any
10 other intoxicating substance and that the person had refused to
11 submit to the test or tests, shall revoke the license to drive and
12 any nonresident operating privilege for a period as provided by
13 Section 6-205.1 of this title. If the person is a resident or a
14 nonresident without a license or permit to operate a motor vehicle
15 in this state, the Commissioner of Public Safety shall deny to the
16 person the issuance of a license or permit for a period as provided
17 by Section 6-205.1 of this title subject to a review as provided in
18 Section 754 of this title. The revocation or denial shall become
19 effective thirty (30) days after the arrested person is given
20 written notice thereof by the officer or by the Department as
21 provided in Section 754 of this title.

22 SECTION 15. AMENDATORY 47 O.S. 2001, Section 754, as
23 last amended by Section 16, Chapter 394, O.S.L. 2005 (47 O.S. Supp.
24 2008, Section 754), is amended to read as follows:

1 Section 754. A. Any arrested person who is under twenty-one
2 (21) years of age and has any measurable quantity of alcohol in the
3 person's blood or breath, or any person twenty-one (21) years of age
4 or older whose alcohol concentration is eight-hundredths (0.08) or
5 more as shown by a breath test administered according to the
6 provisions of this title, or any arrested person who has refused to
7 submit to a breath or blood test, shall immediately surrender his or
8 her driver license, permit or other evidence of driving privilege to
9 the arresting law enforcement officer. The officer shall seize any
10 driver license, permit, or other evidence of driving privilege
11 surrendered by or found on the arrested person during a search.

12 B. If the evidence of driving privilege surrendered to or
13 seized by the officer has not expired and otherwise appears valid,
14 the officer shall issue to the arrested person a dated receipt for
15 that driver license, permit, or other evidence of driving privilege
16 on a form prescribed by the Department of Public Safety. This
17 receipt shall be recognized as a driver license and shall authorize
18 the arrested person to operate a motor vehicle for a period not to
19 exceed thirty (30) days. The receipt form shall contain and
20 constitute a notice of revocation of driving privilege by the
21 Department effective in thirty (30) days. The evidence of driving
22 privilege and a copy of the receipt form issued to the arrested
23 person shall be attached to the sworn report of the officer and
24 shall be submitted by mail or in person to the Department within

1 seventy-two (72) hours of the issuance of the receipt. The failure
2 of the officer to timely file this report shall not affect the
3 authority of the Department to revoke the driving privilege of the
4 arrested person.

5 C. Upon receipt of a written blood or breath test report
6 reflecting that the arrested person, if under twenty-one (21) years
7 of age, had any measurable quantity of alcohol in the person's blood
8 or breath, or, if the arrested person is twenty-one (21) years of
9 age or older, a blood or breath alcohol concentration of eight-
10 hundredths (0.08) or more, accompanied by a sworn report from a law
11 enforcement officer that the officer had reasonable grounds to
12 believe the arrested person had been operating ~~or was in actual~~
13 ~~physical control of~~ a motor vehicle while under the influence of
14 alcohol as prohibited by law, the Department shall revoke or deny
15 the driving privilege of the arrested person for a period as
16 provided by Section 6-205.1 of this title. Revocation or denial of
17 the driving privilege of the arrested person shall become effective
18 thirty (30) days after the arrested person is given written notice
19 thereof by the officer as provided in this section or by the
20 Department as provided in Section 2-116 of this title.

21 D. Upon the written request of a person whose driving privilege
22 has been revoked or denied by notice given in accordance with this
23 section or Section 2-116 of this title, the Department shall grant
24 the person an opportunity to be heard if the request is received by

1 the Department within fifteen (15) days after the notice. The sworn
2 report of the officer, together with the results of any test or
3 tests, shall be deemed true, absent any facial deficiency, should
4 the requesting person fail to appear at the scheduled hearing. A
5 timely request shall stay the order of the Department until the
6 disposition of the hearing unless the person is under cancellation,
7 denial, suspension or revocation for some other reason. The
8 Department may issue a temporary driving permit pending disposition
9 of the hearing, if the person is otherwise eligible. If the hearing
10 request is not timely filed, the revocation or denial shall be
11 sustained.

12 E. 1. At any hearing held relevant to this section, a report
13 of the findings of the laboratory of the Oklahoma State Bureau of
14 Investigation, the medical examiner's report of investigation or
15 autopsy report, or a laboratory report from a forensic laboratory
16 operated by the State of Oklahoma or any political subdivision
17 thereof, which has been made available to the person by the
18 Commissioner or an authorized representative at least five (5) days
19 prior to the hearing, with reference to all or part of the evidence
20 submitted, when certified as correct by the persons making the
21 report shall be received as evidence of the facts and findings
22 stated, if relevant and otherwise admissible in evidence. If the
23 report is deemed relevant by either party, the court shall admit the

24

1 report without the testimony of the person making the report, unless
2 the court, pursuant to this subsection, orders the person to appear.

3 2. When any alleged controlled dangerous substance has been
4 submitted to the laboratory of the OSBI for analysis, and the
5 analysis shows that the submitted material is a controlled dangerous
6 substance, the distribution of which constitutes a felony under the
7 laws of this state, no portion of the substance shall be released to
8 any other person or laboratory absent an order of a district court.
9 The defendant shall additionally be required to submit to the court
10 a procedure for transfer and analysis of the subject material to
11 ensure the integrity of the sample and to prevent the material from
12 being used in any illegal manner.

13 3. The court, upon motion of either party, shall order the
14 attendance of any person preparing a report submitted as evidence in
15 the hearing when it appears there is a substantial likelihood that
16 material evidence not contained in the report may be produced by the
17 testimony of any person having prepared a report. The hearing shall
18 be held and, if sustained, an order issued not less than five (5)
19 days prior to the time when the testimony shall be required.

20 4. If within five (5) days prior to the hearing or during a
21 hearing, a motion is made pursuant to this section requiring a
22 person having prepared a report to testify, the court may hear a
23 report or other evidence but shall continue the hearing until such
24 time notice of the motion and hearing is given to the person making

1 the report, the motion is heard, and, if sustained, the testimony
2 ordered can be given.

3 F. The hearing before the Commissioner of Public Safety or a
4 designated hearing officer shall be conducted in the county of
5 arrest or may be conducted by telephone conference call. The
6 hearing may be recorded and its scope shall cover the issues of
7 whether the officer had reasonable grounds to believe the person had
8 been operating ~~or was in actual physical control of~~ a vehicle upon
9 the public roads, highways, streets, turnpikes or other public place
10 of this state while under the influence of alcohol, any other
11 intoxicating substance, or the combined influence of alcohol and any
12 other intoxicating substance as prohibited by law, and whether the
13 person was placed under arrest.

14 1. If the revocation or denial is based upon a breath or blood
15 test result and a sworn report from a law enforcement officer, the
16 scope of the hearing shall also cover the issues as to whether:

- 17 a. if timely requested by the person, the person was not
18 denied a breath or blood test,
19 b. the specimen was obtained from the person within two
20 (2) hours of the arrest of the person,
21 c. the person, if under twenty-one (21) years of age, was
22 advised that driving privileges would be revoked or
23 denied if the test result reflected the presence of
24 any measurable quantity of alcohol,

- 1 d. the person, if twenty-one (21) years of age or older,
2 was advised that driving privileges would be revoked
3 or denied if the test result reflected an alcohol
4 concentration of eight-hundredths (0.08) or more, and
5 e. the test result in fact reflects the alcohol
6 concentration.

7 2. If the revocation or denial is based upon the refusal of the
8 person to submit to a breath or blood test, reflected in a sworn
9 report by a law enforcement officer, the scope of the hearing shall
10 also include whether:

- 11 a. the person refused to submit to the test or tests, and
12 b. the person was informed that driving privileges would
13 be revoked or denied if the person refused to submit
14 to the test or tests.

15 G. After the hearing, the Commissioner of Public Safety or a
16 designated hearing officer shall order the revocation or denial
17 either rescinded or sustained.

18 SECTION 16. AMENDATORY 47 O.S. 2001, Section 756, as
19 amended by Section 7, Chapter 173, O.S.L. 2006 (47 O.S. Supp. 2008,
20 Section 756), is amended to read as follows:

21 Section 756. A. Upon the trial of any criminal action or
22 proceeding arising out of acts alleged to have been committed by any
23 person while driving ~~or in actual physical control of~~ a motor
24 vehicle while under the influence of alcohol or any other

1 intoxicating substance, or the combined influence of alcohol and any
2 other intoxicating substance, evidence of the alcohol concentration
3 in the blood or breath of the person as shown by analysis of the
4 blood or breath of the person performed in accordance with the
5 provisions of Sections 752 and 759 of this title or evidence of the
6 presence or concentration of any other intoxicating substance as
7 shown by analysis of such person's blood, breath, saliva, or urine
8 specimens in accordance with the provisions of Sections 752 and 759
9 of this title is admissible. Evidence that the person has refused
10 to submit to either of said analyses is also admissible. For the
11 purpose of this title, when the person is under the age of twenty-
12 one (21) years, evidence that there was, at the time of the test,
13 any measurable quantity of alcohol is prima facie evidence that the
14 person is under the influence of alcohol in violation of Section 11-
15 906.4 of this title. For persons twenty-one years of age or older:

16 1. Evidence that there was, at the time of the test, an alcohol
17 concentration of five-hundredths (0.05) or less is prima facie
18 evidence that the person was not under the influence of alcohol;

19 2. Evidence that there was, at the time of the test, an alcohol
20 concentration in excess of five-hundredths (0.05) but less than
21 eight-hundredths (0.08) is relevant evidence that the person's
22 ability to operate a motor vehicle was impaired by alcohol.

23 However, no person shall be convicted of the offense of operating or
24 ~~being in actual physical control of~~ a motor vehicle while such

1 person's ability to operate such vehicle was impaired by alcohol
2 solely because there was, at the time of the test, an alcohol
3 concentration in excess of five-hundredths (0.05) but less than
4 eight-hundredths (0.08) in the blood or breath of the person in the
5 absence of additional evidence that such person's ability to operate
6 such vehicle was affected by alcohol to the extent that the public
7 health and safety was threatened or that said person had violated a
8 state statute or local ordinance in the operation of a motor
9 vehicle; and

10 3. Evidence that there was, at the time of the test, an alcohol
11 concentration of eight-hundredths (0.08) or more shall be admitted
12 as prima facie evidence that the person was under the influence of
13 alcohol.

14 B. For purposes of this title, "alcohol concentration" means
15 grams of alcohol per one hundred (100) milliliters of blood if the
16 blood was tested, or grams of alcohol per two hundred ten (210)
17 liters of breath if the breath was tested.

18 C. To be admissible in a proceeding, the evidence must first be
19 qualified by establishing that the test was administered to the
20 person within two (2) hours after the arrest of the person.

21 SECTION 17. This act shall become effective November 1, 2009.

22

23 52-1-5329 GRS 01/11/09

24