

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1663

By: Dorman

4  
5 AS INTRODUCED

6 An Act relating to motor vehicles; amending 47 O.S.  
7 2001, Section 11-902, as last amended by Section 29,  
8 Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2007, Section  
9 11-902), which relates to driving while intoxicated;  
10 requiring use of ignition interlock upon first  
11 conviction; and providing an effective date.

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

13 SECTION 1. AMENDATORY 47 O.S. 2001, Section 11-902, as  
14 last amended by Section 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp.  
15 2007, Section 11-902), is amended to read as follows:

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

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

3 2. Is under the influence of alcohol;

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

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

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

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

22 a. follow all recommendations made in the assessment and  
23 evaluation ~~and be punished by,~~  
24

- 1           b.   imprisonment in jail for not less than ten (10) days  
2                   nor more than one (1) year. ~~Any person convicted of a~~  
3                   ~~violation for a first offense shall be fined,~~  
4           c.   a fine of not more than One Thousand Dollars  
5                   (\$1,000.00), and  
6           d.   use of an ignition interlock device.

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

- 21           a. follow all recommendations made in the assessment and  
22                   evaluation for treatment at the defendant's expense  
23                   and use of an ignition interlock device, or  
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- 1           b. placement in the custody of the Department of  
2            Corrections for not less than one (1) year and not to  
3            exceed five (5) years and a fine of not more than Two  
4            Thousand Five Hundred Dollars (\$2,500.00), or  
5           c. treatment, imprisonment and a fine within the  
6            limitations prescribed in subparagraphs a and b of  
7            this paragraph.

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

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

- 18           a. follow all recommendations made in the assessment and  
19            evaluation for treatment at the defendant's expense,  
20            two hundred forty (240) hours of community service and  
21            use of an ignition interlock device,  
22           b. placement in the custody of the Department of  
23            Corrections for not less than one (1) year and not to  
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1 exceed seven (7) years and a fine of not more than  
2 Five 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

23 b. placement in the custody of the Department of  
24 Corrections for not less than one (1) year and not to

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

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

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

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

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

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

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

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

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

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

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

1 be construed to prohibit the court from ordering judgment and  
2 sentence in the event the defendant fails or refuses to comply with  
3 an order of the court to obtain the evaluation and assessment  
4 required by this subsection. If the defendant fails or refuses to  
5 comply with an order of the court to obtain the evaluation and  
6 assessment, the Department of Public Safety shall not reinstate  
7 driving privileges until the defendant has complied in full with  
8 such order. Nothing contained in this subsection shall be construed  
9 to prohibit the court from ordering judgment and sentence and any  
10 other sanction authorized by law for failure or refusal to comply  
11 with an order of the court.

12 H. Any person who is found guilty of a violation of the  
13 provisions of this section may be required by the court to attend a  
14 victims impact panel program, if such a program is offered in the  
15 county where the judgment is rendered, and to pay a fee, not less  
16 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars  
17 (\$25.00) as set by the governing authority of the program and  
18 approved by the court, to the program to offset the cost of  
19 participation by the defendant, if in the opinion of the court the  
20 defendant has the ability to pay such fee.

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

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

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

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

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

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

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8 52-1-5725 GRS 12/15/08  
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