

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1014

By: Coates

4
5
6 AS INTRODUCED

7 An Act relating to crimes and punishments; creating
8 the Brandon Burgett Act; providing short title;
9 amending 21 O.S. 2001, Section 1738, as last amended
10 by Section 3, Chapter 134, O.S.L. 2008 (21 O.S. Supp.
11 2008, Section 1738), which relates to seizure and
12 forfeiture; providing for seizure and forfeiture of
13 certain vehicles; providing for distribution of
14 proceeds of sale; amending 47 O.S. 2001, Section 11-
15 902, as last amended by Section 29, Chapter 16 O.S.L.
16 2006 (47 O.S. Supp. 2008, Section 11-902), which
17 relates to driving under the influence of alcohol or
18 intoxicating substance; adding forfeiture of certain
19 vehicles; requiring defendant to pay certain costs
20 and expenses; providing for noncodification; and
21 providing an effective date.

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

23 SECTION 1. NEW LAW A new section of law not to be
24 codified in the Oklahoma Statutes reads as follows:

25 This act shall be known and may be cited as the "Brandon Burgett
26 Act".

27 SECTION 2. AMENDATORY 21 O.S. 2001, Section 1738, as
28 last amended by Section 3, Chapter 134, O.S.L. 2008 (21 O.S. Supp.
29 2008, Section 1738), is amended to read as follows:

1 Section 1738. A. Any commissioned peace officer of this state
2 is authorized to seize any vehicle owned by or registered to the
3 defendant used in the commission of any violation of Section 11-902
4 of Title 47 of the Oklahoma Statutes, the commission of any armed
5 robbery offense defined in Section 801 of this title, or any vehicle
6 owned by or registered to the defendant when such vehicle is used to
7 facilitate the intentional discharge of any kind of firearm in
8 violation of Section 652 of this title, or any vehicle, airplane,
9 vessel, vehicles or parts of vehicles whose numbers have been
10 removed, altered or obliterated so as to prevent determination of
11 the true identity or ownership of said property and parts of
12 vehicles which probable cause indicates are stolen but whose true
13 ownership cannot be determined, or any vehicle owned by or
14 registered to the defendant used in violation of the Trademark Anti-
15 Counterfeiting Act, or any equipment owned by or registered to the
16 defendant which is used in the attempt or commission of any act of
17 burglary in the first or second degree, motor vehicle theft,
18 unauthorized use of a vehicle, obliteration of distinguishing
19 numbers on vehicles or criminal possession of vehicles with altered,
20 removed or obliterated numbers as defined by Sections 1431, 1435,
21 1716, 1719 and 1720 of this title or Sections 4-104 and 4-107 of
22 Title 47 of the Oklahoma Statutes, or any equipment owned by or
23 registered to the defendant used in violation of the Trademark Anti-
24 Counterfeiting Act, or any vehicle, airplane, vessel or equipment

1 owned by or registered to the defendant used in the commission of
2 any arson offense defined in Section 1401, 1402, 1403, 1404 or 1405
3 of this title. Said property may be held as evidence until a
4 forfeiture has been declared or a release ordered. Forfeiture
5 actions under this section may be brought by the district attorney
6 in the proper county of venue as petitioner; provided, in the event
7 the district attorney elects not to file such action, or fails to
8 file such action within ninety (90) days of the date of the seizure
9 of such equipment, the property shall be returned to the owner.

10 B. In addition to the property described in subsection A of
11 this section, the following property is also subject to forfeiture
12 pursuant to this section:

13 1. Property used in the commission of theft of livestock or in
14 any manner to facilitate the theft of livestock;

15 2. The proceeds gained from the commission of theft of
16 livestock;

17 3. Personal property acquired with proceeds gained from the
18 commission of theft of livestock;

19 4. All conveyances, including aircraft, vehicles or vessels,
20 and horses or dogs which are used to transport or in any manner to
21 facilitate the transportation for the purpose of the commission of
22 theft of livestock;

23 5. Any items having a counterfeit mark and all property that is
24 owned by or registered to the defendant that is employed or used in

1 connection with any violation of the Trademark Anti-Counterfeiting
2 Act;

3 6. Any weapon possessed, used or available for use in any
4 manner during the commission of a felony within the State of
5 Oklahoma, or any firearm that is possessed by a convicted felon;

6 7. Any police scanner used in violation of Section 1214 of this
7 title;

8 8. Any computer and its components and peripherals, including
9 but not limited to the central processing unit, monitor, keyboard,
10 printers, scanners, software, and hardware, when it is used in the
11 commission of any crime in this state; and

12 9. All conveyances, including aircraft, vehicles or vessels,
13 monies, coins and currency, or other instrumentality used in any
14 manner or part, to commit any violation of the provisions set forth
15 in Section ~~4~~ 748 of this ~~act~~ title.

16 C. Notice of seizure and intended forfeiture proceeding shall
17 be filed in the office of the clerk of the district court for the
18 county wherein such property is seized and shall be given all owners
19 and parties in interest.

20 D. Notice shall be given according to one of the following
21 methods:

22 1. Upon each owner or party in interest whose right, title, or
23 interest is of record in the Oklahoma Tax Commission or with the
24 county clerk for filings under the Uniform Commercial Code, served

1 in the manner of service of process in civil cases prescribed by
2 Section 2004 of Title 12 of the Oklahoma Statutes;

3 2. Upon each owner or party in interest whose name and address
4 is known, served in the manner of service of process in civil cases
5 prescribed by Section 2004 of Title 12 of the Oklahoma Statutes; or

6 3. Upon all other owners, whose addresses are unknown, but who
7 are believed to have an interest in the property by one publication
8 in a newspaper of general circulation in the county where the
9 seizure was made.

10 E. Within sixty (60) days after the mailing or publication of
11 the notice, the owner of the property and any other party in
12 interest or claimant may file a verified answer and claim to the
13 property described in the notice of seizure and of the intended
14 forfeiture proceeding.

15 F. If at the end of sixty (60) days after the notice has been
16 mailed or published there is no verified answer on file, the court
17 shall hear evidence upon the fact of the unlawful use and may order
18 the property forfeited to the state, if such fact is proven.

19 G. If a verified answer is filed, the forfeiture proceeding
20 shall be set for hearing.

21 H. At the hearing the petitioner shall prove by clear and
22 convincing evidence that property was used in the attempt or
23 commission of an act specified in subsection A of this section or is
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1 property described in subsection B of this section with knowledge by
2 the owner of the property.

3 I. The claimant of any right, title, or interest in the
4 property may prove the lien, mortgage, or conditional sales contract
5 to be bona fide and that the right, title, or interest created by
6 the document was created without any knowledge or reason to believe
7 that the property was being, or was to be, used for the purpose
8 charged.

9 J. In the event of such proof, the court may order the property
10 released to the bona fide or innocent owner, lien holder, mortgagee,
11 or vendor if the amount due such person is equal to, or in excess
12 of, the value of the property as of the date of the seizure, it
13 being the intention of this section to forfeit only the right,
14 title, or interest of the purchaser, except for items bearing a
15 counterfeit mark or used exclusively to manufacture a counterfeit
16 mark.

17 K. If the amount due to such person is less than the value of
18 the property, or if no bona fide claim is established, the property
19 may be forfeited to the state and may be sold pursuant to judgment
20 of the court, as on sale upon execution, and as provided in Section
21 2-508 of Title 63 of the Oklahoma Statutes, except as otherwise
22 provided for by law and for property bearing a counterfeit mark
23 which shall be destroyed.

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1 L. Property taken or detained pursuant to this section shall
2 not be repleviable, but shall be deemed to be in the custody of the
3 petitioner or in the custody of the law enforcement agency as
4 provided in the Trademark Anti-Counterfeiting Act. Except for
5 property required to be destroyed pursuant to the Trademark Anti-
6 Counterfeiting Act, the petitioner shall release said property to
7 the owner of the property if it is determined that the owner had no
8 knowledge of the illegal use of the property or if there is
9 insufficient evidence to sustain the burden of showing illegal use
10 of such property. If the owner of the property stipulates to the
11 forfeiture and waives the hearing, the petitioner may determine if
12 the value of the property is equal to or less than the outstanding
13 lien. If such lien exceeds the value of the property, the property
14 may be released to the lien holder. Property which has not been
15 released by the petitioner shall be subject to the orders and
16 decrees of the court or the official having jurisdiction thereof.

17 M. The petitioner, or the law enforcement agency holding
18 property pursuant to the Trademark Anti-Counterfeiting Act, shall
19 not be held civilly liable for having custody of the seized property
20 or proceeding with a forfeiture action as provided for in this
21 section.

22 N. Attorney fees shall not be assessed against the state or the
23 petitioner for any actions or proceeding pursuant to Section 1701 et
24 seq. of this title.

1 0. The proceeds of the sale of any property shall be
2 distributed as follows, in the order indicated:

3 1. To the bona fide or innocent purchaser, conditional sales
4 vendor, or mortgagee of the property, if any, up to the amount of
5 such person's interest in the property, when the court declaring the
6 forfeiture orders a distribution to such person;

7 2. To the payment of the actual reasonable expenses of
8 preserving the property;

9 3. To the victim of the crime to compensate said victim for any
10 loss incurred as a result of the act for which such property was
11 forfeited; and

12 4. The Except as provided in paragraph 5 of this subsection for
13 vehicles forfeited pursuant to Section 11-902 of Title 47 of the
14 Oklahoma Statutes, the balance to a revolving fund in the office of
15 the county treasurer of the county wherein the property was seized,
16 to be distributed as follows: one-third (1/3) to the investigating
17 law enforcement agency; one-third (1/3) of said fund to be used and
18 maintained as a revolving fund by the district attorney for the
19 victim-witness fund, a reward fund or the evidence fund; and one-
20 third (1/3) to go to the jail maintenance fund, with a yearly
21 accounting to the board of county commissioners in whose county the
22 fund is established. If the petitioner is not the district
23 attorney, then the one-third (1/3) which would have been designated
24 to that office shall be distributed to the petitioner. Monies

1 distributed to the jail maintenance fund shall be used to pay costs
2 for the storage of such property if such property is ordered
3 released to a bona fide or innocent owner, lien holder, mortgagee,
4 or vendor and if such funds are available in said fund; or

5 5. The balance of proceeds of sale from any vehicle forfeited
6 pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes,
7 after all other expenses and distributions have been made as
8 required in this section, shall be deposited in the Drug Abuse
9 Education and Treatment Revolving Funds for use in the treatment and
10 drug testing of indigent substance abusing offenders participating
11 in the Oklahoma Drug Court Act or for substance abuse prevention.

12 P. Monies distributed into the revolving fund in the office of
13 the county treasurer from forfeitures initiated under this section
14 by the district attorney shall be limited to One Hundred Thousand
15 Dollars (\$100,000.00) at any one time in counties with population in
16 excess of three hundred thousand (300,000) and Twenty-five Thousand
17 Dollars (\$25,000.00) at any one time in counties with population
18 less than three hundred thousand (300,000). Any amount in excess of
19 these figures shall be placed in the general fund of the county.

20 Q. If the court finds that the property was not used in the
21 attempt or commission of an act specified in subsection A of this
22 section and was not property subject to forfeiture pursuant to
23 subsection B of this section and is not property bearing a
24 counterfeit mark, the court shall order the property released to the

1 owner as the right, title, or interest appears on record in the Tax
2 Commission as of the seizure.

3 R. No vehicle, airplane, or vessel used by a person as a common
4 carrier in the transaction of business as a common carrier shall be
5 forfeited pursuant to the provisions of this section unless it shall
6 be proven that the owner or other person in charge of such
7 conveyance was a consenting party or privy to the attempt or
8 commission of an act specified in subsection A or B of this section.
9 No property shall be forfeited pursuant to the provisions of this
10 section by reason of any act or omission established by the owner
11 thereof to have been committed or omitted without the knowledge or
12 consent of such owner, and by any person other than such owner while
13 such property was unlawfully in the possession of a person other
14 than the owner in violation of the criminal laws of the United
15 States or of any state.

16 S. Whenever any property is forfeited pursuant to this section,
17 the district court having jurisdiction of the proceeding may order
18 that the forfeited property may be retained for its official use by
19 the state, county, or municipal law enforcement agency which seized
20 the property.

21 SECTION 3. AMENDATORY 47 O.S. 2001, Section 11-902, as
22 last amended by Section 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp.
23 2008, Section 11-902), is amended to read as follows:

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

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

11 2. Is under the influence of alcohol;

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

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

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

23 C. 1. Any person who is convicted of a violation of the
24 provisions of this section shall be deemed guilty of a misdemeanor

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

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

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

11 In addition to all other provisions and penalties for a
12 conviction under this provision, the person shall forfeit all
13 vehicles in which he or she has an ownership interest. The vehicle
14 operated by the person at the time of arrest shall be seized at the
15 time of arrest, and, upon conviction, all vehicles in which the
16 person has an ownership interest shall be seized and forfeited
17 pursuant to the provisions for forfeiture of property in Section
18 1738 of Title 21 of the Oklahoma Statutes. In addition the
19 defendant shall be responsible for all costs of the forfeiture
20 proceeding, any wrecker, towing and storage fees, and all property
21 damages caused by the offender.

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

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

9 a. follow all recommendations made in the assessment and
10 evaluation for treatment at the defendant's expense,
11 two hundred forty (240) hours of community service and
12 use of an ignition interlock device, 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 seven (7) years and a fine of not more than
16 Five Thousand Dollars (\$5,000.00), or

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

20 In addition to all other provisions and penalties for a
21 conviction under this provision, the person shall forfeit all
22 vehicles in which he or she has an ownership interest. The vehicle
23 operated by the person at the time of arrest shall be seized at the
24 time of arrest, and, upon conviction, all vehicles in which the

1 person has an ownership interest shall be seized and forfeited
2 pursuant to the provisions for forfeiture of property in Section
3 1738 of Title 21 of the Oklahoma Statutes. In addition the
4 defendant shall be responsible for all costs of the forfeiture
5 proceeding, any wrecker, towing and storage fees, and all property
6 damages caused by the offender.

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

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

17 a. follow all recommendations made in the assessment and
18 evaluation for treatment at the defendant's expense,
19 followed by not less than one (1) year of supervision
20 and periodic testing at the defendant's expense, four
21 hundred eighty (480) hours of community service, and
22 use of an ignition interlock device for a minimum of
23 thirty (30) days, 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 ten (10) years and a fine of not more than Five
4 Thousand Dollars (\$5,000.00), or
- 5 c. treatment, imprisonment and a fine within the
6 limitations prescribed in subparagraphs a and b of
7 this paragraph.

8 In addition to all other provisions and penalties for a
9 conviction under this provision, the person shall forfeit all
10 vehicles in which he or she has an ownership interest. The vehicle
11 operated by the person at the time of arrest shall be seized at the
12 time of arrest, and, upon conviction, all vehicles in which the
13 person has an ownership interest shall be seized and forfeited
14 pursuant to the provisions for forfeiture of property in Section
15 1738 of Title 21 of the Oklahoma Statutes. In addition the
16 defendant shall be responsible for all costs of the forfeiture
17 proceeding, any wrecker, towing and storage fees, and all property
18 damages caused by the offender.

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

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

1 result of driving under the influence of alcohol or other
2 intoxicating substance, is convicted of a violation of this section
3 shall be deemed guilty of a felony.

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

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

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

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

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

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

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

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

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

1 assessment program offered by a certified assessment agency or
2 certified assessor for the purpose of evaluating and assessing the
3 receptivity to treatment and prognosis of the person. The court
4 shall order the person to reimburse the agency or assessor for the
5 evaluation and assessment. The fee for an evaluation and assessment
6 shall be the amount provided in subsection C of Section 3-460 of
7 Title 43A of the Oklahoma Statutes. The evaluation and assessment
8 shall be conducted at a certified assessment agency, the office of a
9 certified assessor or at another location as ordered by the court.
10 The agency or assessor shall, within seventy-two (72) hours from the
11 time the person is evaluated and assessed, submit a written report
12 to the court for the purpose of assisting the court in its final
13 sentencing determination. If such report indicates that the
14 evaluation and assessment shows that the defendant would benefit
15 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
16 course or a treatment program or both, the court shall, as a
17 condition of any sentence imposed, including deferred and suspended
18 sentences, require the person to follow all recommendations
19 identified by the evaluation and assessment and ordered by the
20 court. No person, agency or facility operating an evaluation and
21 assessment program certified by the Department of Mental Health and
22 Substance Abuse Services shall solicit or refer any person evaluated
23 and assessed pursuant to this section for any treatment program or
24 substance abuse service in which such person, agency or facility has

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

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

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

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

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

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

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

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

19 SECTION 4. This act shall become effective November 1, 2009.

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21 52-1-307 NP 3/6/2009 1:06:02 AM

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