

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1138

By: Easley

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5  
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending  
8 21 O.S. 2001, Section 852.1, which relates to child  
9 endangerment; creating vehicle-related child  
10 endangerment offenses; modifying language; providing  
11 affirmative defense to certain action; amending 47  
12 O.S. 2001, Section 11-902, as last amended by Section  
13 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp. 2008,  
14 Section 11-902), which relates to driving under the  
15 influence; creating crime of child endangerment by  
16 DUI; setting penalty; making certain persons guilty  
17 of felony child endangerment for certain act;  
18 providing an effective date; and declaring an  
19 emergency.

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

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

23 Section 852.1 A. A person who is the parent, guardian, or  
24 person having custody or control over a child as defined in Section  
25 7001-1.3 of Title 10 of the Oklahoma Statutes, commits child  
26 endangerment when the person ~~knowingly~~:

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

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

5        3. Permits a child to be present in a vehicle when the person  
6 has knowledge or a reasonable belief that the operator of the  
7 vehicle is impaired by or is under the influence of alcohol or  
8 another substance capable of adversely affecting the central nervous  
9 system as such terms are defined by statute; or

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

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

19       B. The provisions of this section shall not apply to any  
20 parent, guardian or other person having custody or control of a  
21 child for the sole reason that the parent, guardian or other person  
22 in good faith selects and depends upon spiritual means or prayer for  
23 the treatment or cure of disease or remedial care for such child.  
24 This subsection shall in no way limit or modify the protections

1 afforded said child in Section 852 of this title or Section 7006-1.1  
2 of Title 10 of the Oklahoma Statutes.

3 C. Any person convicted of violating any provision of this  
4 section shall be guilty of a felony punishable by imprisonment in  
5 the custody of the Department of Corrections for a term of not more  
6 than four (4) years ~~in the State Penitentiary,~~ or by the ~~imposition~~  
7 ~~of~~ a fine ~~of~~ not ~~more than~~ exceeding Five Thousand Dollars  
8 (\$5,000.00), or by both such fine and imprisonment.

9 SECTION 2. AMENDATORY 47 O.S. 2001, Section 11-902, as  
10 last amended by Section 29, Chapter 16, O.S.L. 2006 (47 O.S. Supp.  
11 2008, Section 11-902), is amended to read as follows:

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

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

22 2. Is under the influence of alcohol;

23

24

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

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

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

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

23           2. Any person who, within ten (10) years after a previous  
24 conviction of a violation of this section or a violation pursuant to

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

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

23 However, if the treatment in subparagraph a of this paragraph  
24 does not include residential or inpatient treatment for a period of

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 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 ten (10) days, the person shall serve a term of  
23 imprisonment of at least ten (10) days.

24

1       4. Any person who is convicted of a third or subsequent felony  
2 offense pursuant to the provisions of this section shall participate  
3 in an assessment and evaluation by an assessment agency or  
4 assessment personnel certified by the Department of Mental Health  
5 and Substance Abuse Services pursuant to Section 3-460 of Title 43A  
6 of the 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 followed by not less than one (1) year of supervision  
10 and periodic testing at the defendant's expense, four  
11 hundred eighty (480) hours of community service, and  
12 use of an ignition interlock device for a minimum of  
13 thirty (30) days, or

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

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

21       However, if the person does not undergo residential or inpatient  
22 treatment pursuant to subparagraph a of this paragraph the person  
23 shall serve a term of imprisonment of at least ten (10) days.  
24

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

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

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

18           D. Any person who is convicted of a violation of driving under  
19 the influence with a blood or breath alcohol concentration of  
20 fifteen-hundredths (0.15) or more pursuant to this section shall be  
21 deemed guilty of aggravated driving under the influence. A person  
22 convicted of aggravated driving under the influence shall  
23 participate in an assessment and evaluation by an assessment agency  
24 or assessment personnel certified by the Department of Mental Health

1 and Substance Abuse Services pursuant to Section 3-460 of Title 43A  
2 of the Oklahoma Statutes and shall comply with all recommendations  
3 for treatment. Such person shall be sentenced to not less than one  
4 (1) year of supervision and periodic testing at the defendant's  
5 expense, four hundred eighty (480) hours of community service, and  
6 an ignition interlock device for a minimum of thirty (30) days.  
7 Nothing in this subsection shall preclude the defendant from being  
8 charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of  
9 subsection C of this section.

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

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

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

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

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

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

1 other sanction authorized by law for failure or refusal to comply  
2 with an order of the court.

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

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

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

1 imposed, including deferred and suspended sentences, require the  
2 person to participate in and successfully complete all  
3 recommendations from the evaluation, such as an alcohol and drug  
4 substance abuse treatment program pursuant to Section 3-452 of Title  
5 43A of the Oklahoma Statutes.

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

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

16 M. ~~In any case in which~~ 1. When a person is twenty-one (21)  
17 years of age or older, and is the driver, operator, or person in  
18 physical control of a vehicle, and is convicted of violating the  
19 provisions any provision of this section and who was while  
20 transporting or having in the motor vehicle a at the time of arrest  
21 any child fifteen (15) less than eighteen (18) years of age or  
22 younger, the fine person shall be enhanced to guilty of child  
23 endangerment by DUI. Upon conviction of child endangerment by DUI  
24 pursuant to this subsection, the violator shall be fined an amount

1 not exceeding a sum which is double the amount of the whole sum  
2 otherwise prescribed fine imposed against the person for the  
3 underlying DUI violation.

4 2. When a person is the parent, guardian, or person having  
5 custody or control of a child as defined by Section 7001-1.3 of  
6 Title 10 of the Oklahoma Statutes, and is the driver, operator, or  
7 person in physical control of the vehicle, and is convicted of  
8 violating any provision of this section while transporting or having  
9 in the motor vehicle at the time of arrest such child or children,  
10 the person shall be guilty of felony child endangerment as provided  
11 in Section 852.1 of Title 21 of the Oklahoma Statutes.

12 SECTION 3. This act shall become effective July 1, 2009.

13 SECTION 4. It being immediately necessary for the preservation  
14 of the public peace, health and safety, an emergency is hereby  
15 declared to exist, by reason whereof this act shall take effect and  
16 be in full force from and after its passage and approval.

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