STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 529

By: Jolley and Ford of the Senate

and

Nelson, Cockroft, Sanders, Bennett and Scott of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to driving under the influence; creating the Erin Elizabeth Swezey Act; providing short title; amending 47 O.S. 2001, Section 6-111, as last amended by Section 2, Chapter 388, O.S.L. 2009 (47 O.S. Supp. 2010, Section 6-111), which relates to issuance of driver licenses; requiring procedure to label a driver license with certain designation under certain circumstances; amending 47 O.S. 2001, Section 6-205.1, as last amended by Section 2, Chapter 345, O.S.L. 2010 (47 O.S. Supp. 2010, Section 6-205.1), which relates to periods of revocation; requiring installation of ignition interlock device during certain periods of mandatory revocation; making certain modification apply to Class D motor vehicles; deleting certain modification restriction; amending 47 O.S. 2001, Section 6-211, as last amended by Section 21, Chapter 311, O.S.L. 2006 (47 O.S. Supp. 2010, Section 6-211), which relates to appeals to district court; clarifying hearing procedures; providing statutory reference; making certain modification apply to Class D vehicles; amending Section 1, Chapter 167, O.S.L. 2005, as amended by Section 18, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2010, Section 6-212.3), which relates to cancellation, suspension or revocation of licenses; requiring installation of ignition interlock devices for specified time periods; amending 47 O.S. 2001,

Section 11-902, as last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp. 2010, Section 11-902), which relates to persons under the influence of alcohol or other intoxicating substances; modifying certain penalties for driving under the influence; amending 47 O.S. 2001, Section 11-906.4, which relates to the Drunk Driving Prevention Act; providing statutory references; clarifying certain penalties for driving under the influence; providing for the continued use of ignition interlock devices; providing penalties for third and subsequent convictions; providing for noncodification; and providing an effective date.

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

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

This act shall be known and may be cited as the "Erin Elizabeth Swezey Act".

SECTION 2. AMENDATORY 47 O.S. 2001, Section 6-111, as last amended by Section 2, Chapter 388, O.S.L. 2009 (47 O.S. Supp. 2010, Section 6-111), is amended to read as follows:

Section 6-111. A. 1. The Department of Public Safety shall, upon payment of the required fee, issue to every applicant qualifying therefor a Class A, B, C or D driver license or identification card as applied for, which license or card shall bear thereon a distinguishing alphanumeric identification assigned to the licensee or cardholder, date of issuance and date of expiration of the license or card, the full name, signature or computerized

signature, date of birth, residence address, sex, a color photograph or computerized image of the licensee or cardholder and security features as determined by the Department. The photograph or image shall depict a full front unobstructed view of the entire face of the licensee or cardholder. When any person is issued both a driver license and an identification card, the Department shall ensure the information on both the license and the card are the same, unless otherwise provided by law.

2. A driver license or identification card issued by the Department on or after March 1, 2004, shall bear thereon the county of residence of the licensee or cardholder.

3. The Department may cancel the distinguishing number, when that distinguishing number is another person's Social Security number, assign a new distinguishing alphanumeric identification, and issue a new license or identification card without charge to the licensee or cardholder.

4. The Department may promulgate rules for inclusion of the height and a brief description of the licensee or cardholder on the face of the card or license identifying the licensee or cardholder as deaf or hard-of-hearing.

5. It is unlawful for any person to apply, adhere, or otherwise attach to a driver license or identification card any decal, sticker, label, or other attachment. Any law enforcement officer is authorized to remove and dispose of any unlawful decal, sticker,

label, or other attachment from the driver license of a person. The law enforcement officer, the employing agency of the officer, the Department of Public Safety, and the State of Oklahoma shall be immune from any liability for any loss suffered by the licensee, cardholder, or the owner of the decal, sticker, label, or other attachment caused by the removal and destruction of the decal, sticker, label, or other attachment.

6. The Department of Public Safety shall develop by rule an alternative procedure whereby a person applying for a renewal or replacement Class D license or identification card, when the person satisfactorily demonstrates to the Department the inability to appear personally to be photographed because the person is not in the state at the time of renewal or at a time a replacement is required by the person, may be issued a license or card; provided, immediately upon returning to Oklahoma, the person shall obtain a replacement license or card as provided in Section 6-114 of this title.

B. The Department may issue a temporary permit to an applicant for a driver license permitting such applicant to operate a motor vehicle while the Department is completing its investigation and determination of all facts relative to such applicant's privilege to receive a license. Such permit must be in the immediate possession of the driver while operating a motor vehicle, and it shall be

invalid when the applicant's driver license has been issued or for good cause has been refused.

C. 1. The Department may issue a restricted commercial driver license to seasonal drivers eighteen (18) years of age or older for any of the following specific farm-related service industries:

a. farm retail outlets and suppliers,

b. agri-chemical businesses,

c. custom harvesters, and

d. livestock feeders.

The applicant shall hold a valid Oklahoma driver license and shall meet all the requirements for a commercial driver license. The restricted commercial driver license shall not exceed a total of one hundred eighty (180) days within any twelve-month period.

2. The restricted commercial driver license shall not be valid for operators of commercial motor vehicles beyond one hundred fifty (150) miles from the place of business or the farm currently being served. Such license shall be limited to Class B vehicles. Holders of such licenses who transport hazardous materials which are required to be placarded shall be limited to the following:

a. diesel fuel in quantities of one thousand (1,000) gallons or less,

b. liquid fertilizers in vehicles with total capacities of three thousand (3,000) gallons or less, and

c. solid fertilizers that are not mixed with any organic substance.

No other placarded hazardous materials shall be transported by holders of such licenses.

D. 1. The Department shall develop a procedure whereby a person applying for an original, renewal or replacement Class A, B, C or D driver license or identification card who is required to register as a convicted sex offender with the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act and who the Department of Corrections designates as an aggravated or habitual offender pursuant to subsection J of Section 584 of Title 57 of the Oklahoma Statutes shall be issued a license or card bearing the words "Sex Offender".

2. The Department shall notify every person subject to registration under the provisions of ~~this act~~ Section 1-101 et seq. of this title who holds a current Class A, B, C or D driver license or identification card that such person is required to surrender the license or card to the Department within one hundred eighty (180) days from the date of the notice.

3. Upon surrendering the license or card for the reason set forth in this subsection, application may be made with the Department for a replacement license or card bearing the words "Sex Offender".

4. Failure to comply with the requirements set forth in such notice shall result in cancellation of the person's license or card. Such cancellation shall be in effect for one (1) year, after which time the person may make application with the Department for a new license or card bearing the words "Sex Offender". Continued use of a canceled license or card shall constitute a misdemeanor and shall, upon conviction thereof, be punishable by a fine of not less than Twenty-five Dollars ($25.00), nor more than Two Hundred Dollars ($200.00). When an individual is no longer required to register as a convicted sex offender with the Department of Corrections pursuant to the provisions of the Sex Offenders Registration Act, the individual shall be eligible to receive a driver license or identification card which does not bear the words "Sex Offender".

E. Nothing in subsection D of this section shall be deemed to impose any liability upon or give rise to a cause of action against any employee, agent or official of the Department of Corrections for failing to designate a sex offender as an aggravated or habitual offender pursuant to subsection J of Section 584 of Title 57 of the Oklahoma Statutes.

F. <u>The Department shall develop a procedure whereby a person subject to an order for the installation of an ignition interlock device shall be required by the Department to submit their driver license for a replacement. The replacement driver license shall bear the words "Interlock Required" and such designation shall</u>

remain on the driver license for the duration of the order requiring the ignition interlock device. The replacement license shall be subject to the same expiration and renewal procedures provided by law. Upon completion of the requirements for the interlock device, a person may apply for a replacement driver license.

G. The Department shall develop a procedure whereby a person applying for an original, renewal or replacement Class D driver license who has been granted modified driving privileges under this title shall be issued a Class D driver license which identifies the license as a modified license.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 6-205.1, as last amended by Section 2, Chapter 345, O.S.L. 2010 (47 O.S. Supp. 2010, Section 6-205.1), is amended to read as follows:

Section 6-205.1 A. The driving privilege of a person who is convicted of any offense as provided in paragraph 2 ~~or 6~~ of subsection A of Section 6-205 of this title, or a person who has refused to submit to a test or tests as provided in Section 753 of this title, or a person whose alcohol concentration is subject to the provisions of Section 754 of this title, shall be revoked or denied by the Department of Public Safety for the following period, as applicable:

1. The first license revocation pursuant to paragraph 2 of subsection A of Section 6-205 of this title or to Section 753 or 754 of this title shall be for one hundred eighty (180) days, which may

be modified; provided, any modification under this paragraph shall apply to Class D motor vehicles only;

2. A revocation pursuant to paragraph 2 of subsection A of Section 6-205 of this title, or to Section 753 or 754 of this title shall be for a period of one (1) year if within ten (10) years preceding the date of arrest relating thereto, as shown by the records of the Department~~; provided, any modification under this paragraph shall apply to Class D motor vehicles only~~:

a. a prior revocation commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205 of this title, or to Section 753 or 754 of this title~~. Such period may be modified~~, or

b. the record of the person reflects a prior conviction in another jurisdiction which did not result in a revocation of Oklahoma driving privileges, for a violation substantially similar to paragraph 2 of subsection A of Section 6-205 of this title, and the person was not a resident or a licensee of Oklahoma at the time of the offense resulting in the conviction.

Such period may be modified; provided, any modification under this paragraph shall apply to Class D motor vehicles only. Provided, further, whether or not the person is eligible for, applies for, or is granted a modification, the person shall be required to install

an ignition interlock device or devices, pursuant to Section 754.1 of this title, during the mandatory period of revocation; or

3. A revocation pursuant to paragraph 2 of subsection A of Section 6-205 of this title, or to Section 753 or 754 of this title shall be for a period of three (3) years if within ten (10) years preceding the date of arrest relating thereto, as shown by the records of the Department~~; provided, any modification under this paragraph shall apply to Class D motor vehicles only~~:

a. two or more prior revocations commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205 of this title, or to Section 753 or 754 of this title~~. Such period may be modified~~,

b. the record of the person reflects two or more prior convictions in another jurisdiction which did not result in a revocation of Oklahoma driving privileges, for a violation substantially similar to paragraph 2 of subsection A of Section 6-205 of this title, and the person was not a resident or a licensee of Oklahoma at the time of the offense resulting in the conviction~~. Such period may be modified~~, or

c. any combination of two or more prior revocations or convictions as described in subparagraphs a and b of this paragraph.

Such period may be modified; provided, any modification under this paragraph shall apply to Class D motor vehicles only. Provided, further, whether or not the person is eligible for, applies for, or is granted a modification, the person shall be required to install an ignition interlock device or devices, pursuant to Section 754.1 of this title, during the mandatory period of revocation.

B. The driving privilege of a person who is convicted of any offense as provided in paragraph 6 of subsection A of Section 6-205 of this title shall be revoked or denied by the Department of Public Safety for the following period, as applicable:

1. The first license revocation shall be for one hundred eighty (180) days, which may be modified; provided, for license revocations for a misdemeanor charge of possessing a controlled dangerous substance, the provisions of this paragraph shall apply to any such revocations by the Department on or after January 1, 1993; provided further, any modification under this paragraph shall apply to Class D motor vehicles only;

2. A revocation shall be for a period of one (1) year if within ten (10) years preceding the date of arrest relating thereto, as shown by the records of the Department:

a. a prior revocation commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205 of this title, or under Section 753 or 754 of this title~~. Such period shall not be modified~~, or

b. the record of the person reflects a prior conviction in another jurisdiction which did not result in a revocation of Oklahoma driving privileges, for a violation substantially similar to paragraph 2 or 6 of subsection A of Section 6-205 of this title, and the person was not a resident or a licensee of Oklahoma at the time of the offense resulting in the conviction.

Such period shall not be modified; or

3. A revocation shall be for a period of three (3) years if within ten (10) years preceding the date of arrest relating thereto, as shown by the records of the Department:

a. two or more prior revocations commenced pursuant to paragraph 2 or 6 of subsection A of Section 6-205 of this title, or under Section 753 or 754 of this title~~. Such period shall not be modified~~,

b. the record of the person reflects two or more prior convictions in another jurisdiction which did not result in a revocation of Oklahoma driving privileges, for a violation substantially similar to paragraph 2 or 6 of subsection A of Section 6-205 of this title, and the person was not a resident or licensee of Oklahoma at the time of the offense resulting in the conviction~~. Such period shall not be modified~~, or

c. any combination of two or more prior revocations as described in subparagraphs a and b or this paragraph.

Such period shall not be modified.

The revocation of the driving privilege of any person under this subsection shall not run concurrently with any other withdrawal of driving privilege resulting from a different incident and which requires the driving privilege to be withdrawn for a prescribed amount of time. A denial based on a conviction of any offense as provided in paragraph 6 of subsection A of Section 6-205 of this title shall become effective on the first day the convicted person is otherwise eligible to apply for and be granted driving privilege if the person was not eligible to do so at the time of the conviction.

C. For the purposes of this subsection:

1. The term "conviction" includes a juvenile delinquency adjudication by a court or any notification from a court pursuant to Section 6-107.1 of this title; and

2. The term "revocation" includes a denial of driving privileges by the Department.

D. Each period of revocation not subject to modification shall be mandatory and neither the Department nor any court shall grant driving privileges based upon hardship or otherwise for the duration of that period. Each period of revocation, subject to modification as provided for in this section, may be modified as provided for in

Section 754.1 or 755 of this title; provided, any modification under this paragraph shall apply to Class D motor vehicles only.

E. Any appeal of a revocation or denial of driving privileges shall be governed by Section 6-211 of this title.

SECTION 4. AMENDATORY 47 O.S. 2001, Section 6-211, as last amended by Section 21, Chapter 311, O.S.L. 2006 (47 O.S. Supp. 2010, Section 6-211), is amended to read as follows:

Section 6-211. A. Any person denied driving privileges, or whose driving privilege has been canceled, denied, suspended or revoked by the Department, except where such cancellation, denial, suspension or revocation is mandatory, under the provisions of Section 6-205 of this title, or disqualified by the Department, under the provisions of Section 6-205.2 or 761 of this title, shall have the right of appeal to the district court as hereinafter provided. Proceedings before the district court shall be exempt from the provisions of the Oklahoma Pleading and Discovery codes, except that the appeal shall be by petition, without responsive pleadings. The district court is hereby vested with original jurisdiction to hear said petition.

B. A person whose driving privilege is denied, canceled, revoked or suspended due to inability to meet standards prescribed by law, or due to an out-of-state conviction or violation, or due to an excessive point accumulation on the traffic record, or for an

unlawful license issued, may appeal in the county in which the person resides.

C. Any person whose driving privilege is canceled, denied, suspended or revoked may appeal to the district court in the county in which the offense was committed upon which the Department based its order.

D. A person whose driving privilege is revoked or denied or who is denied a hearing pursuant to Section 753 or 754 of this title may appeal to the district court in the county in which the arrest occurred relating to the test refusal or test result, as shown by the records of the Department.

E. The petition shall be filed within thirty (30) days after the order has been served upon the person, except a petition relating to an implied consent revocation shall be filed within thirty (30) days after the Department gives notice to the person that the revocation is sustained as provided in Section 754 of this title. It shall be the duty of the district court to enter an order setting the matter for hearing not less than fifteen (15) days and not more than thirty (30) days from the date the petition is filed. A certified copy of petition and order for hearing shall be served forthwith by the clerk of the court upon the Commissioner of Public Safety by certified mail at the Department of Public Safety, Oklahoma City, Oklahoma.

F. At a hearing on a revocation by the Department pursuant to the implied consent laws as provided in Sections 6-205.1, 753 and 754 of this title, the court shall not consider the merits of the revocation action unless a written request for an administrative hearing was timely submitted to the Department and the person actually exercised the opportunity to appear as provided in Section 754 of this title and the Department entered an order sustaining the revocation.

G. Upon a hearing relating to a revocation or disqualification pursuant to a conviction for an offense enumerated in Section 6-205, 761, or 6-205.2 of this title, the court shall not consider the propriety or merits of the revocation or disqualification action, except to correct the identity of the person convicted as shown by records of the Department.

H. In the event the Department declines to modify, as provided in Section 754.1 of this title, a revocation order issued pursuant to Section 753, Section 754, paragraph 2 of subsection A of Section 6-205 or Section 6-205.1 of this title, which is subject to modification pursuant to Section 11-906.4 of this title or Section 6-205.1 of this title, a petition for modification may be included with the appeal or separately filed at any time, and the district court may, in its discretion, modify the revocation as provided for in Section 755 of this title; provided, any modification under this subsection shall apply to Class D motor vehicles only.

I. The court shall take testimony and examine the facts and circumstances, including all of the records on file in the office of the Department of Public Safety relative to the offense committed and the driving record of the person, and determine from the facts, circumstances, and records whether or not the petitioner is entitled to driving privileges or shall be subject to the order of denial, cancellation, suspension or revocation issued by the Department. The court may also determine whether or not, from the person's previous driving record, the order was for a longer period of time than such facts and circumstances warranted. In case the court finds that the order was not justified, the court may sustain the appeal, vacate the order of the Department and direct that driving privileges be restored to the petitioner, if otherwise eligible. The court may, in case it determines the order was justified, but that the period of the suspension or revocation was excessive, enter an order modifying the same as provided by law.

J. The testimony of any hearing pursuant to this section shall be taken by the court stenographer and preserved for the purpose of appeal and, in case the Department files notice of appeal from the order of the court as provided herein, the court shall order and direct the court clerk to prepare and furnish a complete transcript of all pleadings and proceedings, together with a complete transcript taken at said hearing at no cost to the Department, except the cost of transcribing.

K. In order to stay or supersede any order of the Department, the petitioner may execute and file a cash appeal bond in the sum of Two Hundred Fifty Dollars ($250.00) with the clerk of the court, to be approved by the court clerk. A certified copy of the bond shall be served along with the notice of hearing and petition.

The bond shall be to the State of Oklahoma and conditioned that the petitioner will prosecute the appeal with due diligence and during pendency of the appeal abide by and not violate any of the laws of this state or any other state in the operation of a motor vehicle, and that the petitioner will abide by and perform the final judgment of the court therein, and in case the appeal is finally denied the appellant will pay all court costs incurred in the appeal in the district court. If the petitioner is convicted of a traffic offense during the pendency of the appeal or fails to prosecute the appeal with due diligence, the bond may be forfeited to the court fund upon application by the Department and after hearing before the court in which the appeal is pending.

L. After filing and approval of the appeal bond and the furnishing thereof to the Department as hereby provided, the Department shall restore driving privileges to the person if otherwise eligible, and the person shall be permitted to operate a motor vehicle pending the appeal, under terms and conditions as prescribed in the bond which shall include the installation of an ignition interlock device on every motor vehicle operated by the

person, pursuant to Section 754.1 or 755 of this title, if the person was denied modification pursuant to any provision of paragraph 2 of subsection A of Section 6-205 or Section 6-205.1, 753 or 754 of this title; provided, however, if the order of the Department is sustained in final judgment, the court shall, in such final judgment, enter an order extending the period of suspension or revocation for such time as the petitioner was permitted to operate motor vehicles under the provisions of an appeal bond, and the court shall also in such final judgment direct and require the immediate surrender of any driver license or licenses to the Department.

M. An appeal may be taken by the person or by the Department from the order or judgment of the district court to the Supreme Court of the State of Oklahoma as otherwise provided by law.

SECTION 5. AMENDATORY Section 1, Chapter 167, O.S.L. 2005, as amended by Section 18, Chapter 394, O.S.L. 2005 (47 O.S. Supp. 2010, Section 6-212.3), is amended to read as follows:

Section 6-212.3 A. Whenever the records of the Department of Public Safety reflect <u>the revocation of the driving privilege of a person as provided in subsection A of Section 6-205.1 of this title, the Department shall require the installation of an ignition interlock device, at the expense of the person, as provided in subsection D of this section, after the mandatory period of revocation, as prescribed by Section 6-205.1 of this title, for the following period, as applicable</u>:

1. ~~A~~ For a first revocation and if the person refused to submit to a test or tests, or had a blood or breath alcohol concentration of fifteen hundredths (0.15) or more, for a period of one and one-half (1 1/2) years following the mandatory period of revocation or until the driving privileges of the person are reinstated, whichever is longer;

2. For a second ~~or subsequent conviction of a person for driving under the influence of alcohol or the combination of alcohol and any other intoxicating substance within five (5) years of a previous conviction for the same offense; or~~

~~2. A~~ revocation, for a period of four (4) years following the mandatory period of revocation or until the driving privileges of the person are reinstated, whichever is longer; or

3. For a third or subsequent revocation, for a period of five (5) years following the mandatory period of revocation or until the driving privileges of the person are reinstated, whichever is longer.

B. Whenever the records of the Department of Public Safety reflect a person is classified as an excessive user of alcohol or of a combination of alcohol and any other intoxicating substance, and inimical to public safety, in accordance with rules promulgated by the Department, the person shall, upon request for reinstatement of driving privileges from revocation or suspension based upon the conviction or the status as an excessive user, provide proof of

installation of an ignition interlock device approved by the Board of Tests for Alcohol and Drug Influence, at the ~~person's own~~ expense of the person, ~~upon every motor vehicle operated by the person~~ as provided in subsection D of this section.

~~B.~~ C. The Department shall require, as a condition of reinstatement, the device to be installed upon any vehicle owned or leased, as reflected on the vehicle registration, by an employer of the person for use by the person, except when the employer requests the ignition interlock device not be installed. The request shall be in writing and notarized on the official letterhead of the employer and provided by the person to the Department; provided, a request shall not be accepted by the Department under the following circumstances:

1. When the person is self-employed or owns part or all of the company or corporation, or exercises control over some part of the business which owns or leases the vehicle; or

2. When the person is employed by a relative who is within the first degree of consanguinity or who resides in the same household. The person shall comply with all provisions of law and rule regarding ignition interlock devices.

~~C.~~ D. 1. The requirements of subsection A or B, as applicable, of this section shall be a prerequisite and condition for reinstatement of driving privileges, in addition to other conditions for driving privilege reinstatement provided by law or by rule of

the Department. ~~The~~ Upon request and eligibility, the Department shall issue a restricted driver license to the person, upon payment of a restricted driver license fee of Fifty Dollars ($50.00) and all other appropriate fees by the person. The restricted driver license and the driving record of the person shall indicate by an appropriate restriction that the person is only authorized to operate a vehicle upon which an ignition interlock is installed. If the person is operating a motor vehicle owned or leased by an employer who has not given permission for an ignition interlock device to be installed, the employer shall provide the person with a letter, on official letterhead of the employer, which the person shall carry in his or her immediate possession at all times when operating a motor vehicle and shall display for examination and inspection upon demand of a peace officer.

2. The restricted driver license fee authorized by this section shall be remitted to the State Treasurer to be credited to the Department of Public Safety Revolving Fund. All monies accruing to the credit of the Department of Public Safety Revolving Fund from restricted driver license fees shall be budgeted and expended solely for the purpose of administering the provisions of this section.

3. The installation of an ignition interlock device, as required by this subsection, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive.

~~D. 1.~~ E. Installation of an ignition interlock device pursuant to ~~paragraph 1 of~~ subsection A or B of this section ~~shall be for a period of six (6) months which~~ shall run concurrently with a court order, if any, for installation of an ignition interlock device, or devices pursuant to the same conviction.

~~2. Installation of an ignition interlock device pursuant to paragraph 2 of subsection A of this section shall be for a period of twelve (12) months which shall run concurrently with a court order, if any, for installation of an ignition interlock device pursuant to a conviction which caused the person to be classified as an excessive user of alcohol or of a combination of alcohol and any other intoxicating substance.~~

~~E.~~ F. The person shall pay the monthly maintenance fee, not to exceed Twenty-five Dollars ($25.00) per month, for each ignition interlock device installed pursuant to this section. The person shall comply with all provisions of law regarding ignition interlock devices.

~~F.~~ G. The ignition interlock device provider shall make available to the Department regular reports of violations, if any, for each ignition interlock device installed pursuant to this section.

~~G.~~ H. Pursuant to Section 6-113 of ~~Title 47 of the Oklahoma Statutes~~ this title, the Department may revoke or suspend the driving privileges of the person for reports from the provider which

indicate attempts by the person to operate a motor vehicle when the person is under the influence of alcohol.

~~H.~~ I. The Department shall promulgate rules necessary to implement and administer this section.

SECTION 6. AMENDATORY 47 O.S. 2001, Section 11-902, as last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp. 2010, Section 11-902), is amended to read as follows:

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

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

2. Is under the influence of alcohol;

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

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

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

C. 1. Any person who is convicted of a violation of the provisions of this section shall be deemed guilty of a misdemeanor for the first offense and shall:

a. participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall follow all recommendations made in the assessment and evaluation ~~and~~,

b. be punished by imprisonment in jail for not less than ten (10) days nor more than one (1) year~~. Any person convicted of a violation for a first offense shall~~, and

c. be fined not more than One Thousand Dollars ($1,000.00).

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

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

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

b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed five (5) years and a fine of not more than Two Thousand Five Hundred Dollars ($2,500.00), or

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

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

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

a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense, two hundred forty (240) hours of community service and use of an ignition interlock device, <u>as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes,</u> or

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

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

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

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

a. follow all recommendations made in the assessment and evaluation for treatment at the defendant's expense, followed by not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service, and use of an ignition interlock device, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, for a minimum of thirty (30) days, or

b. placement in the custody of the Department of Corrections for not less than one (1) year and not to exceed twenty (20) years and a fine of not more than Five Thousand Dollars ($5,000.00), or

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

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

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

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

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

D. Any person who is convicted of a violation of driving under the influence with a blood or breath alcohol concentration of fifteen-hundredths (0.15) or more pursuant to this section shall be deemed guilty of aggravated driving under the influence. A person

convicted of aggravated driving under the influence shall participate in an assessment and evaluation by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and shall comply with all recommendations for treatment. Such person shall be sentenced to ~~not~~:

1. Not less than one (1) year of supervision and periodic testing at the defendant's expense, four hundred eighty (480) hours of community service~~,~~; and ~~an~~

2. An ignition interlock device or devices, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, for a minimum of thirty (30) days. Nothing in this subsection shall preclude the defendant from being charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of subsection C of this section.

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

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

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

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

G. Any person who is found guilty of a violation of the provisions of this section shall be ordered to participate in, prior to sentencing, an alcohol and drug substance abuse evaluation and assessment program offered by a certified assessment agency or certified assessor for the purpose of evaluating and assessing the receptivity to treatment and prognosis of the person. The court shall order the person to reimburse the agency or assessor for the evaluation and assessment. The fee for an evaluation and assessment shall be the amount provided in subsection C of Section 3-460 of Title 43A of the Oklahoma Statutes. The evaluation and assessment shall be conducted at a certified assessment agency, the office of a certified assessor or at another location as ordered by the court. The agency or assessor shall, within seventy-two (72) hours from the time the person is evaluated and assessed, submit a written report to the court for the purpose of assisting the court in its final sentencing determination. If such report indicates that the evaluation and assessment shows that the defendant would benefit from a ten-hour or twenty-four-hour alcohol and drug substance abuse

course or a treatment program or both, the court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to follow all recommendations identified by the evaluation and assessment and ordered by the court. No person, agency or facility operating an evaluation and assessment program certified by the Department of Mental Health and Substance Abuse Services shall solicit or refer any person evaluated and assessed pursuant to this section for any treatment program or substance abuse service in which such person, agency or facility has a vested interest; however, this provision shall not be construed to prohibit the court from ordering participation in or any person from voluntarily utilizing a treatment program or substance abuse service offered by such person, agency or facility. If a person is sentenced to imprisonment in the custody of the Department of Corrections and the court has received a written evaluation report pursuant to the provisions of this subsection, the report shall be furnished to the Department of Corrections with the judgment and sentence. Any evaluation and assessment report submitted to the court pursuant to the provisions of this subsection shall be handled in a manner which will keep such report confidential from the general public's review. Nothing contained in this subsection shall be construed to prohibit the court from ordering judgment and sentence in the event the defendant fails or refuses to comply with an order of the court to obtain the evaluation and assessment

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

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

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

J. Any person who, within ten (10) years after a previous conviction of a violation of this section or a violation pursuant to the provisions of law of another state prohibiting the offense

provided in subsection A of this section or a violation of a municipal ordinance prohibiting the offense provided in subsection A of this section, pleads guilty or nolo contendere or is convicted of a violation of this section shall not be required to undergo the alcohol and drug substance evaluation program required by subsection G of this section. The court shall, as a condition of any sentence imposed, including deferred and suspended sentences, require the person to participate in and successfully complete all recommendations from the evaluation, such as an alcohol and drug substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes.

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

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

M. 1. When a person is eighteen (18) years of age or older, and is the driver, operator, or person in physical control of a vehicle, and is convicted of violating any provision of this section

while transporting or having in the motor vehicle any child less than eighteen (18) years of age, the fine shall be enhanced to double the amount of the fine imposed for the underlying driving under the influence (DUI) violation which shall be in addition to any other penalties allowed by this section.

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

SECTION 7. AMENDATORY 47 O.S. 2001, Section 11-906.4, is amended to read as follows:

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

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

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

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

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

1. For a first ~~offense~~ conviction, by:

a. a fine of not less than One Hundred Dollars ($100.00) nor more than Five Hundred Dollars ($500.00), ~~or by~~

b. assignment to and completion of twenty (20) hours of community service, ~~or by~~

c. requiring the person to attend and complete a treatment program, or ~~by~~

d. any combination of fine, community service, or treatment;

2. Upon a second conviction, by:

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

b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device or devices, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, for a period of not less than thirty (30) days~~, as ordered by the court, on~~

~~every vehicle owned by the person and on the vehicle regularly operated by the person, if such vehicle is not owned by the person, pursuant to Section 754.1 or 755 of this title. The installation of an ignition interlock device, as required by this subparagraph, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive~~.

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

3. Upon a third or subsequent conviction, by:

a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and

b. the requirement, after the conclusion of the mandatory revocation period, to install an ignition interlock device <u>or devices, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes,</u> for a period of not less than thirty (30) days~~, as ordered by the court, on every vehicle owned by the person and on the vehicle~~

~~regularly operated by the person, if such vehicle is not owned by the person, pursuant to Section 754.1 or 755 of this title. The installation of an ignition interlock device, as required by this subparagraph, shall not be construed to authorize the person to drive unless the person is otherwise eligible to drive~~.

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

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

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

1. Upon a first conviction:

a. the cancellation or denial of driving privileges as ordered by the court pursuant to subsection B of Section 6-107.1 of this title, ~~and~~

b. the mandatory revocation of driving privileges pursuant to Section 6-205.1, 753 or 754 of this title,

which revocation period may be modified as provided by law, and

c. the continued installation of an ignition interlock device or devices, at the expense of the person, as provided in subsection D of Section 6-212.3 of this title, after the mandatory period of cancellation, denial or revocation for a period as provided in paragraph 1 of subsection A of Section 6-212.3 of this title;

2. Upon a second ~~or subsequent~~ conviction:

a. the cancellation or denial of driving privileges ~~for a period of two (2) years or until the person attains eighteen (18) years of age, whichever is longer~~, as ordered by the court pursuant to subsection B of Section 6-107.2 of this title,

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

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

d. the continued installation of an ignition interlock device or devices, at the expense of the person, as

provided in subsection D of Section 6-212.3 of this title, after the mandatory period of cancellation, denial or revocation for a period as provided in paragraph 2 of subsection A of Section 6-212.3 of this title; and

3. Upon a third or subsequent conviction:

a. the cancellation or denial of driving privileges as ordered by the court pursuant to subsection B of Section 6-107.2 of this title,

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

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

d. the continued installation of an ignition interlock device or devices, at the expense of the person, as provided in subsection D of Section 6-212.3 of this title, after the mandatory period of cancellation, denial, or revocation for a period as provided in paragraph 3 of subsection A of Section 6-212.3 of this title.

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

F. As used in this section:

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

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

SECTION 8. This act shall become effective November 1, 2011.

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