

1 ENGROSSED SENATE
2 BILL NO. 529

By: Jolley and Ford of the
Senate

3 and

4 Nelson of the House
5
6

7 An Act relating to driving under the influence;
8 creating the Erin Elizabeth Swezey Act; providing
9 short title; amending 47 O.S. 2001, Section 6-111, as
10 last amended by Section 2, Chapter 388, O.S.L. 2009
11 (47 O.S. Supp. 2010, Section 6-111), which relates to
12 issuance of license or identification card; requiring
13 procedure to label a driver license or identification
14 card with certain designation under certain
15 circumstances; amending 47 O.S. 2001, Section 6-
16 205.1, as last amended by Section 2, Chapter 345,
17 O.S.L. 2010 (47 O.S. Supp. 2010, Section 6-205.1),
18 which relates to periods of revocation; modifying
19 time frame for certain types of revocations;
20 requiring modifications of driving privileges;
21 amending Section 1, Chapter 167, O.S.L. 2005, as
22 amended by Section 18, Chapter 394, O.S.L. 2005 (47
23 O.S. Supp. 2010, Section 6-212.3), which relates to
24 cancellation, suspension or revocation of licenses;
modifying certain time periods for installation of
ignition interlock devices; 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;
modifying certain time period for use of ignition
interlock device; amending 47 O.S. 2001, Section
754.1, as last amended by Section 3, Chapter 345,
O.S.L. 2010 (47 O.S. Supp. 2010, Section 754.1),
which relates to modification of revocation of
driving privileges; adding certain requirement for
denial of interlock installation; providing for
noncodification; and providing an effective date.

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

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

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

6 SECTION 2. AMENDATORY 47 O.S. 2001, Section 6-111, as
7 last amended by Section 2, Chapter 388, O.S.L. 2009 (47 O.S. Supp.
8 2010, Section 6-111), is amended to read as follows:

9 Section 6-111. A. 1. The Department of Public Safety shall,
10 upon payment of the required fee, issue to every applicant
11 qualifying therefor a Class A, B, C or D driver license or
12 identification card as applied for, which license or card shall bear
13 thereon a distinguishing alphanumeric identification assigned to the
14 licensee or cardholder, date of issuance and date of expiration of
15 the license or card, the full name, signature or computerized
16 signature, date of birth, residence address, sex, a color photograph
17 or computerized image of the licensee or cardholder and security
18 features as determined by the Department. The photograph or image
19 shall depict a full front unobstructed view of the entire face of
20 the licensee or cardholder. When any person is issued both a driver
21 license and an identification card, the Department shall ensure the
22 information on both the license and the card are the same, unless
23 otherwise provided by law.

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

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

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

13 5. It is unlawful for any person to apply, adhere, or otherwise
14 attach to a driver license or identification card any decal,
15 sticker, label, or other attachment. Any law enforcement officer is
16 authorized to remove and dispose of any unlawful decal, sticker,
17 label, or other attachment from the driver license of a person. The
18 law enforcement officer, the employing agency of the officer, the
19 Department of Public Safety, and the State of Oklahoma shall be
20 immune from any liability for any loss suffered by the licensee,
21 cardholder, or the owner of the decal, sticker, label, or other
22 attachment caused by the removal and destruction of the decal,
23 sticker, label, or other attachment.

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

11 B. The Department may issue a temporary permit to an applicant
12 for a driver license permitting such applicant to operate a motor
13 vehicle while the Department is completing its investigation and
14 determination of all facts relative to such applicant's privilege to
15 receive a license. Such permit must be in the immediate possession
16 of the driver while operating a motor vehicle, and it shall be
17 invalid when the applicant's driver license has been issued or for
18 good cause has been refused.

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

- 22 a. farm retail outlets and suppliers,
- 23 b. agri-chemical businesses,
- 24 c. custom harvesters, and

1 d. livestock feeders.

2 The applicant shall hold a valid Oklahoma driver license and
3 shall meet all the requirements for a commercial driver license.

4 The restricted commercial driver license shall not exceed a total of
5 one hundred eighty (180) days within any twelve-month period.

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

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

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

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

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

20 D. 1. The Department shall develop a procedure whereby a
21 person applying for an original, renewal or replacement Class A, B,
22 C or D driver license or identification card who is required to
23 register as a convicted sex offender with the Department of
24 Corrections pursuant to the provisions of the Sex Offenders

1 Registration Act and who the Department of Corrections designates as
2 an aggravated or habitual offender pursuant to subsection J of
3 Section 584 of Title 57 of the Oklahoma Statutes shall be issued a
4 license or card bearing the words "Sex Offender".

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

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

15 4. Failure to comply with the requirements set forth in such
16 notice shall result in cancellation of the person's license or card.
17 Such cancellation shall be in effect for one (1) year, after which
18 time the person may make application with the Department for a new
19 license or card bearing the words "Sex Offender". Continued use of
20 a canceled license or card shall constitute a misdemeanor and shall,
21 upon conviction thereof, be punishable by a fine of not less than
22 Twenty-five Dollars (\$25.00), nor more than Two Hundred Dollars
23 (\$200.00). When an individual is no longer required to register as
24 a convicted sex offender with the Department of Corrections pursuant

1 to the provisions of the Sex Offenders Registration Act, the
2 individual shall be eligible to receive a driver license or
3 identification card which does not bear the words "Sex Offender".

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

10 F. The Department shall develop a procedure whereby a person
11 subject to a court order for the installation of an ignition
12 interlock device shall be required by the Department to submit their
13 driver license or identification card for a replacement. The
14 replacement driver license or identification card shall bear the
15 words "Interlock Required" and such designation shall remain on the
16 driver license or identification card for the duration of the court
17 order requiring the ignition interlock device. The replacement
18 license or identification card shall be subject to the same
19 expiration and renewal procedures provided by law. Upon completion
20 of the court order requirements for the interlock device, a person
21 may apply for a replacement driver license or identification card
22 along with the court order reflecting the completion of the time
23 period.

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

6 SECTION 3. AMENDATORY 47 O.S. 2001, Section 6-205.1, as
7 last amended by Section 2, Chapter 345, O.S.L. 2010 (47 O.S. Supp.
8 2010, Section 6-205.1), is amended to read as follows:

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

17 1. The first license revocation pursuant to paragraph 2 of
18 subsection A of Section 6-205 of this title or to Section 753 or 754
19 of this title shall be for one hundred eighty (180) days, which may
20 be modified, followed by a minimum of two (2) years or until
21 reinstated, which ~~may~~ shall be modified; provided, any modification
22 under this paragraph shall apply to Class D motor vehicles only;

23 2. A revocation pursuant to paragraph 2 of subsection A of
24 Section 6-205 of this title, or to Section 753 or 754 of this title

1 shall be for a period of one (1) year, followed by a minimum period
2 of five (5) years, which shall be modified pursuant to the
3 provisions of this act, if within ten (10) years preceding the date
4 of arrest relating thereto, as shown by the records of the
5 Department; provided, any modification under this paragraph shall
6 apply to Class D motor vehicles only:

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

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

19 3. A revocation pursuant to paragraph 2 of subsection A of
20 Section 6-205 of this title, or to Section 753 or 754 of this title
21 shall be for a period of three (3) years, followed by a minimum
22 period of five (5) years, which shall be modified pursuant to the
23 provisions of this act, if within ten (10) years preceding the date
24 of arrest relating thereto, as shown by the records of the

1 Department; provided, any modification under this paragraph shall
2 apply to Class D motor vehicles only:

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

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

15 c. any combination of two or more prior revocations or
16 convictions as described in subparagraphs a and b of
17 this paragraph. Such period ~~may~~ shall be modified.

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

22 1. The first license revocation shall be for one hundred eighty
23 (180) days, which may be modified; provided, for license revocations
24 for a misdemeanor charge of possessing a controlled dangerous

1 substance, the provisions of this paragraph shall apply to any such
2 revocations by the Department on or after January 1, 1993; provided
3 further, any modification under this paragraph shall apply to Class
4 D motor vehicles only;

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

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

12 b. the record of the person reflects a prior conviction
13 in another jurisdiction which did not result in a
14 revocation of Oklahoma driving privileges, for a
15 violation substantially similar to paragraph 2 or 6 of
16 subsection A of Section 6-205 of this title, and the
17 person was not a resident or a licensee of Oklahoma at
18 the time of the offense resulting in the conviction.
19 Such period shall not be modified; or

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

23 a. two or more prior revocations commenced pursuant to
24 paragraph 2 or 6 of subsection A of Section 6-205 of

1 this title, or under Section 753 or 754 of this title.

2 Such period shall not be modified,

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

11 c. any combination of two or more prior revocations as
12 described in subparagraphs a and b or this paragraph.
13 Such period shall not be modified.

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

24 C. For the purposes of this subsection:

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

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

6 D. Each period of revocation not subject to modification shall
7 be mandatory and neither the Department nor any court shall grant
8 driving privileges based upon hardship or otherwise for the duration
9 of that period. Each period of revocation, subject to modification
10 as provided for in this section, may be modified as provided for in
11 Section 754.1 or 755 of this title; provided, any modification under
12 this paragraph shall apply to Class D motor vehicles only.

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

15 SECTION 4. AMENDATORY Section 1, Chapter 167, O.S.L.
16 2005, as amended by Section 18, Chapter 394, O.S.L. 2005 (47 O.S.
17 Supp. 2010, Section 6-212.3) is amended to read as follows:

18 Section 6-212.3 A. Whenever the records of the Department of
19 Public Safety reflect:

20 1. A second or subsequent conviction of a person for driving
21 under the influence of alcohol or the combination of alcohol and any
22 other intoxicating substance within five (5) years of a previous
23 conviction for the same offense; or

24

1 2. A person is classified as an excessive user of alcohol or of
2 a combination of alcohol and any other intoxicating substance, and
3 inimical to public safety, in accordance with rules promulgated by
4 the Department,
5 the person shall, upon request for reinstatement of driving
6 privileges from revocation or suspension based upon the conviction
7 or the status as an excessive user, provide proof of installation of
8 an ignition interlock device approved by the Board of Tests for
9 Alcohol and Drug Influence, at the person's own expense, upon every
10 motor vehicle operated by the person.

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

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

23 2. When the person is employed by a relative who is within the
24 first degree of consanguinity or who resides in the same household.

1 The person shall comply with all provisions of law and rule
2 regarding ignition interlock devices.

3 C. 1. The requirements of subsection A of this section shall
4 be a prerequisite and condition for reinstatement of driving
5 privileges, in addition to other conditions for driving privilege
6 reinstatement provided by law or by rule of the Department. The
7 Department shall issue a restricted driver license to the person,
8 upon payment of a restricted driver license fee of Fifty Dollars
9 (\$50.00) and all other appropriate fees by the person. The
10 restricted driver license and the driving record of the person shall
11 indicate by an appropriate restriction that the person is only
12 authorized to operate a vehicle upon which an ignition interlock is
13 installed. If the person is operating a motor vehicle owned or
14 leased by an employer who has not given permission for an ignition
15 interlock device to be installed, the employer shall provide the
16 person with a letter, on official letterhead of the employer, which
17 the person shall carry in his or her immediate possession at all
18 times when operating a motor vehicle and shall display for
19 examination and inspection upon demand of a peace officer.

20 2. The restricted driver license fee authorized by this section
21 shall be remitted to the State Treasurer to be credited to the
22 Department of Public Safety Revolving Fund. All monies accruing to
23 the credit of the Department of Public Safety Revolving Fund from
24

1 restricted driver license fees shall be budgeted and expended solely
2 for the purpose of administering the provisions of this section.

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

6 D. 1. Installation of an ignition interlock device pursuant to
7 paragraph 1 of subsection A of this section shall be for a period of
8 ~~six (6) months~~ one (1) year which shall run ~~concurrently~~
9 consecutively with a court order, if any, for installation of an
10 ignition interlock device pursuant to the same conviction.

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

18 E. The person shall pay the monthly maintenance fee for each
19 ignition interlock device installed pursuant to this section. The
20 person shall comply with all provisions of law regarding ignition
21 interlock devices.

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

1 G. Pursuant to Section 6-113 of ~~Title 47 of the Oklahoma~~
2 ~~Statutes~~ this title, the Department may revoke or suspend the
3 driving privileges of the person for reports from the provider which
4 indicate attempts by the person to operate a motor vehicle when the
5 person is under the influence of alcohol.

6 H. The Department shall promulgate rules necessary to implement
7 and administer this section.

8 SECTION 5. AMENDATORY 47 O.S. 2001, Section 11-902, as
9 last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp.
10 2010, Section 11-902), is amended to read as follows:

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

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

21 2. Is under the influence of alcohol;

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

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

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

9 C. 1. Any person who is convicted of a violation of the
10 provisions of this section shall be deemed guilty of a misdemeanor
11 for the first offense and shall participate in an assessment and
12 evaluation by an assessment agency or assessment personnel certified
13 by the Department of Mental Health and Substance Abuse Services
14 pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes and
15 shall follow all recommendations made in the assessment and
16 evaluation and be punished by imprisonment in jail for not less than
17 ten (10) days nor more than one (1) year and be required to make use
18 of an ignition interlock device approved by the Board of Tests for
19 Alcohol and Drug Influence for not less than two (2) years. Any
20 person convicted of a violation for a first offense shall be fined
21 not more than One Thousand Dollars (\$1,000.00).

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

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

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

24

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

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

11 a. follow all recommendations made in the assessment and
12 evaluation for treatment at the defendant's expense,
13 two hundred forty (240) hours of community service and
14 use of an ignition interlock device for a period of
15 not less than five (5) years, 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 ten (10) years and a fine of not more than Five
19 Thousand Dollars (\$5,000.00), 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 ten (10) days, the person shall serve a term of
2 imprisonment of at least ten (10) days.

3 4. Any person who is convicted of a third or subsequent felony
4 offense pursuant to the provisions of this section shall participate
5 in an assessment and evaluation by an assessment agency or
6 assessment personnel certified by the Department of Mental Health
7 and Substance Abuse Services pursuant to Section 3-460 of Title 43A
8 of the 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 followed by not less than one (1) year of supervision
12 and periodic testing at the defendant's expense, four
13 hundred eighty (480) hours of community service, and
14 use of an ignition interlock device for a ~~minimum of~~
15 ~~thirty (30) days~~ period of not less than eight (8)
16 years, or

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

21 c. treatment, imprisonment and a fine within the
22 limitations prescribed in subparagraphs a and b of
23 this paragraph.
24

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

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

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

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

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

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

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

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

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

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

5 G. Any person who is found guilty of a violation of the
6 provisions of this section shall be ordered to participate in, prior
7 to sentencing, an alcohol and drug substance abuse evaluation and
8 assessment program offered by a certified assessment agency or
9 certified assessor for the purpose of evaluating and assessing the
10 receptivity to treatment and prognosis of the person. The court
11 shall order the person to reimburse the agency or assessor for the
12 evaluation and assessment. The fee for an evaluation and assessment
13 shall be the amount provided in subsection C of Section 3-460 of
14 Title 43A of the Oklahoma Statutes. The evaluation and assessment
15 shall be conducted at a certified assessment agency, the office of a
16 certified assessor or at another location as ordered by the court.
17 The agency or assessor shall, within seventy-two (72) hours from the
18 time the person is evaluated and assessed, submit a written report
19 to the court for the purpose of assisting the court in its final
20 sentencing determination. If such report indicates that the
21 evaluation and assessment shows that the defendant would benefit
22 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
23 course or a treatment program or both, the court shall, as a
24 condition of any sentence imposed, including deferred and suspended

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

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

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

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

20 J. Any person who, within ten (10) years after a previous
21 conviction of a violation of this section or a violation pursuant to
22 the provisions of law of another state prohibiting the offense
23 provided in subsection A of this section or a violation of a
24 municipal ordinance prohibiting the offense provided in subsection A

1 of this section, pleads guilty or nolo contendere or is convicted of
2 a violation of this section shall not be required to undergo the
3 alcohol and drug substance evaluation program required by subsection
4 G of this section. The court shall, as a condition of any sentence
5 imposed, including deferred and suspended sentences, require the
6 person to participate in and successfully complete all
7 recommendations from the evaluation, such as an alcohol and drug
8 substance abuse treatment program pursuant to Section 3-452 of Title
9 43A of the Oklahoma Statutes.

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

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

20 M. 1. When a person is eighteen (18) years of age or older,
21 and is the driver, operator, or person in physical control of a
22 vehicle, and is convicted of violating any provision of this section
23 while transporting or having in the motor vehicle any child less
24 than eighteen (18) years of age, the fine shall be enhanced to

1 double the amount of the fine imposed for the underlying driving
2 under the influence (DUI) violation which shall be in addition to
3 any other penalties allowed by this section.

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

7 SECTION 6. AMENDATORY 47 O.S. 2001, Section 11-906.4, is
8 amended to read as follows:

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

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

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

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

22 B. Any person under twenty-one (21) years of age who violates
23 any provision of this section shall be subject to the seizure of the
24 driver license of that person at the time of arrest or detention and

1 the person, upon conviction, shall be guilty of operating or being
2 in actual physical control of a motor vehicle while under the
3 influence while under age and shall be punished:

4 1. For a first offense, by:

5 a. a fine of not less than One Hundred Dollars (\$100.00)

6 nor more than Five Hundred Dollars (\$500.00), or

7 b. by assignment to and completion of twenty (20) hours

8 of community service, or

9 c. by requiring the person to attend and complete a

10 treatment program, or

11 d. by any combination of fine, community service, or

12 treatment, and

13 e. the installation of an ignition interlock device

14 approved by the Board of Tests for Alcohol and Drug

15 Influence for a period of not less than two (2) years;

16 2. Upon a second conviction, by:

17 a. assignment to and completion of not less than two

18 hundred forty (240) hours of community service, and

19 b. the requirement, after the conclusion of the mandatory

20 revocation period, to install an ignition interlock

21 device for a period of not less than ~~thirty (30) days~~

22 five (5) years, as ordered by the court, on every

23 vehicle owned by the person and on the vehicle

24 regularly operated by the person, if such vehicle is

1 not owned by the person, pursuant to Section 754.1 or
2 755 of this title. The installation of an ignition
3 interlock device, as required by this subparagraph,
4 shall not be construed to authorize the person to
5 drive unless the person is otherwise eligible to
6 drive.

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

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

- 14 a. assignment to and completion of not less than four
15 hundred eighty (480) hours of community service, and
16 b. the requirement, after the conclusion of the mandatory
17 revocation period, to install an ignition interlock
18 device for a period of not less than ~~thirty (30) days~~
19 eight (8) years, as ordered by the court, on every
20 vehicle owned by the person and on the vehicle
21 regularly operated by the person, if such vehicle is
22 not owned by the person, pursuant to Section 754.1 or
23 755 of this title. The installation of an ignition
24 interlock device, as required by this subparagraph,

1 shall not be construed to authorize the person to
2 drive unless the person is otherwise eligible to
3 drive.

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

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

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

14 1. Upon a first conviction:

15 a. the cancellation or denial of driving privileges as
16 ordered by the court pursuant to Section 6-107.1 of
17 this title, and

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

22 2. Upon a second or subsequent conviction:

23 a. the cancellation or denial of driving privileges for a
24 period of two (2) years or until the person attains

1 eighteen (18) years of age, whichever is longer,
2 pursuant to subsection B of Section 6-107.2 of this
3 title,

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

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

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

14 F. As used in this section:

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

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

19 SECTION 7. AMENDATORY 47 O.S. 2001, Section 754.1, as
20 last amended by Section 3, Chapter 345, O.S.L. 2010 (47 O.S. Supp.
21 2010, Section 754.1), is amended to read as follows

22 Section 754.1. A. The Department of Public Safety, prior to an
23 administrative hearing for a revocation or denial arising under the
24 provisions of Sections 751 through 754 or Section 761 of this title

1 or under the provisions of Section 6-205.1 of this title, may modify
2 the revocation or denial when it is determined by the Department
3 that no other adequate means of transportation exists for the person
4 whose driving privilege has been revoked or denied; provided, any
5 modification under this paragraph shall apply to Class D motor
6 vehicles only.

7 B. As a prerequisite and condition of any modification, the
8 person shall be required to have installed an ignition interlock
9 device approved by the Board of Tests for Alcohol and Drug
10 Influence, at the person's own expense, upon every motor vehicle
11 operated by the person. The Department shall require, as a
12 condition of modification, the device to be installed upon any
13 vehicle owned or leased, as reflected on the vehicle registration,
14 by an employer of the person for use by the person, except when the
15 employer requests the ignition interlock device not be installed and
16 files with the Department, on a form to be created and utilized for
17 such purpose by the Department, an affidavit that the employer will
18 not allow the driver under interlock restriction to operate a
19 company-owned or -leased vehicle. The request shall be in writing
20 and notarized on the official letterhead of the employer and
21 provided by the person to the Department; provided, a request shall
22 not be accepted by the Department under the following circumstances:

23

24

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

4 2. When the person is employed by a relative who either is
5 within the first degree of consanguinity or who resides in the same
6 household.

7 The person shall comply with all provisions of law and rule
8 regarding ignition interlock devices.

9 C. Upon the issuance of a modification order pursuant to this
10 section or Section 755 of this title, or under the provisions of
11 paragraph 1, 2, or 3 of subsection A or paragraph 1, 2, or 3 of
12 subsection B of Section 6-205.1 of this title, for a violation of
13 this title, the person shall pay a modification fee of One Hundred
14 Seventy-five Dollars (\$175.00) to the Department. For each
15 modification fee collected pursuant to the provisions of this
16 subsection, One Hundred Dollars (\$100.00) shall be remitted to the
17 State Treasurer to be credited to the General Revenue Fund in the
18 State Treasury and Seventy-five Dollars (\$75.00) shall be remitted
19 to the State Treasurer to be credited to the Department of Public
20 Safety Revolving Fund. All monies accruing to the credit of the
21 Department of Public Safety Revolving Fund from modification fees
22 shall be budgeted and expended solely for the purpose of
23 administering the provisions of this section and Section 755 of this
24 title.

1 D. The Board of Tests for Alcohol and Drug Influence shall
2 promulgate such rules as are necessary to implement and administer
3 the provisions of this subsection relating to ignition interlock
4 devices and the providers of such devices.

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

6 Passed the Senate the 15th day of March, 2011.

7

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Presiding Officer of the Senate

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10 Passed the House of Representatives the ____ day of _____,
11 2011.

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Presiding Officer of the House
of Representatives

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