HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 53rd Legislature (2011)

HOUSE BILL 1319 By: Wright of the House

and

Sykes of the Senate

AS INTRODUCED

An Act relating to driving under the influence; amending 21 O.S. 2001, Section 852.1, as last amended by Section 122, Chapter 234, O.S.L. 2009 (21 O.S. Supp. 2010, Section 852.1), which relates to child endangerment; providing for the prosecution of persons under specified statutes; 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 penalties for driving under the influence of alcohol; clarifying scope of certain prohibited acts; modifying and adding statutory references; modifying penalties; clarifying evaluation and assessment program requirements; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 2001, Section 852.1, as last amended by Section 122, Chapter 234, O.S.L. 2009 (21 O.S. Supp. 2010, Section 852.1), is amended to read as follows:

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Section 852.1 A. A person who is the parent, guardian, or person having custody or control over a child as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, commits child endangerment when the person:

1. Knowingly permits physical or sexual abuse of a child;

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

3. Knowingly permits a child to be present in a vehicle when the person knows or should have known that the operator of the vehicle is impaired by or is under the influence of alcohol or another intoxicating substance; or

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

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

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Nothing in this subsection shall prohibit the prosecution of a person pursuant to the provisions of Section 11-902 or 11-904 of Title 47 of the Oklahoma Statutes.

B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of this title or Section 1-4-904 of Title 10A of the Oklahoma Statutes.

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

SECTION 2. 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

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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 participate in an assessment and evaluation ~~by an assessment agency or assessment personnel certified by the Department of Mental Health and Substance Abuse Services~~

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~~pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes~~ pursuant to subsection G of this section and shall follow all recommendations made in the assessment and evaluation ~~and~~. Such person shall 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 be fined not more than One Thousand Dollars ($1,000.00).

2. Any person who, within ten (10) years ~~after a previous conviction~~ of the date following the completion of the execution of any sentence or deferred judgment for a violation of this section or a violation pursuant to the provisions of any law of this state or another state prohibiting the ~~offense~~ offenses provided in subsection A of this section, ~~is convicted of~~ Section 11-904 of this title or paragraph 4 of subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes, commits 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~~ the date following the completion of the execution of such sentence or deferred judgment commits a second offense pursuant to the ~~provision~~ provisions of this section shall be ~~deemed~~ guilty of a felony and shall participate in an assessment and evaluation ~~by an~~

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~~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~~ pursuant to subsection G of this section 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~~ subsection G of this ~~paragraph~~ section 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 or a violation pursuant to the provisions of any law of this state or another state prohibiting the offenses provided for in subsection A of this section, Section 11-904 of this title or paragraph 4 of subsection A

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of Section 852.1 of Title 21 of the Oklahoma Statutes 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~~ pursuant to subsection G of this section 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, 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~~ subsection G of this ~~paragraph~~ section 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 or a violation

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pursuant to the provisions of any law of this state or another state prohibiting the offenses provided for in subsection A of this section, Section 11-904 of this title or paragraph 4 of subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes 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~~ pursuant to subsection G of this section 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 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.

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However, if the person does not undergo residential or inpatient treatment pursuant to ~~subparagraph a~~ subsection G of this ~~paragraph~~ section 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~~ commits a violation of this section shall be ~~deemed~~ guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not less than five (5) years and not to exceed twenty (20) years, and a fine of not more than Ten Thousand Dollars ($10,000.00).

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

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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~~ pursuant to subsection G of this section and shall comply with all recommendations for treatment. Such person shall be sentenced to 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 ignition interlock device for a minimum of ~~thirty (30)~~ ninety (90) 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. Any person who is convicted pursuant to the provisions of this subsection shall be guilty of a misdemeanor for a first offense and shall be punished as provided in paragraph 1 of subsection C of this section. Any person who, within ten (10) years of the completion of the execution of any sentence or

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deferred judgment, commits a second violation of this subsection shall be guilty of a felony and shall be punished as provided in paragraph 2 of subsection C of this section. Any person who commits a second felony offense pursuant to this subsection shall, upon conviction, be guilty of a felony and shall be punished as provided in paragraph 3 of subsection C of this section. Any person who is convicted of a third or subsequent felony offense pursuant to the provisions of this subsection shall be guilty of a felony and shall be punished as provided in paragraph 4 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

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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 and shall, at the expense of the defendant, follow all recommendations made in the assessment and evaluation for treatment. 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. 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

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substance abuse treatment program pursuant to Section 3-452 of Title 43A of the Oklahoma Statutes. 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

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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.

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I. Any person who is found guilty of a felony violation of the provisions of this section ~~may~~ shall 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.

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~~L.~~ K. 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.~~ L. 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 or Section 11-904 of this title.

M. Any plea of guilty, nolo contendere or finding of guilt for a violation of this section or a violation pursuant to the provisions of any law of this state or another state prohibiting the offenses provided for in subsection A of this section, Section 11-904 of this title, or paragraph 4 of subsection A of Section 852.1

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of Title 21 of the Oklahoma Statutes, shall constitute a conviction of the offense for the purpose of this section for a period of ten (10) years following the completion of any court-imposed probationary term.

N. If qualified by knowledge, skill, experience, training or education, a witness shall be allowed to testify in the form of an opinion or otherwise solely on the issue of impairment, but not on the issue of specific alcohol concentration level, relating to the following:

1. The results of any standardized field sobriety test including, but not limited to, the horizontal gaze nystagmus (HGN) test administered by a person who has completed training in standardized field sobriety testing; or

2. Whether a person was under the influence of one or more impairing substances and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a drug recognition expert shall be qualified to give the testimony in any case in which such testimony may be relevant.

SECTION 3. This act shall become effective November 1, 2011.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03-01-2011 - DO PASS, As Coauthored.

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