

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB1319**

By: Wright of the House and Sykes of the Senate

Title: Driving under the influence; modifying penalties; effective date.

---

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its Amendment No. 1; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

**HOUSE CONFEREES**

Jordan Fred Jordan

Martin (Steve) Steve Martin

McCullough McCullough

Moore J. H. Moore

Morrisette \_\_\_\_\_

Roan Paul D. Roan

Roberts (Dustin) D Roberts

Schwartz Ally Schwartz

Sherrer Ben Sherrer

Sullivan Alan Sullivan

Tibbs Lucy Tibbs

Wesselhoft Paul Wesselhoft

Williams Greg Williams

**SENATE CONFEREES**

Sykes \_\_\_\_\_  
Schulz \_\_\_\_\_  
Branan \_\_\_\_\_  
Brecheen \_\_\_\_\_  
Ellis \_\_\_\_\_  
Bass \_\_\_\_\_

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1319

By: Wright, Farley, Reynolds  
and Ritze of the House

7 And

8 Sykes, Brecheen and Ivester  
9 of the Senate

10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to driving under the influence;  
12 enacting the Mark McGee Act of 2011; amending 21 O.S.  
13 2001, Section 852.1, as last amended by Section 122,  
14 Chapter 234, O.S.L. 2009 (21 O.S. Supp. 2010, Section  
15 852.1), which relates to child endangerment;  
16 providing for the prosecution of persons under  
17 specified statutes; amending 47 O.S. 2001, Section  
18 11-902, as last amended by Section 3, Chapter 310,  
19 O.S.L. 2009 (47 O.S. Supp. 2010, Section 11-902),  
20 which relates to penalties for driving under the  
21 influence of alcohol; clarifying scope of certain  
22 prohibited acts; modifying and adding statutory  
23 references; modifying penalties; clarifying  
24 evaluation and assessment program requirements;  
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:

1 This act shall be known and may be cited as the "Mark McGee Act  
2 of 2011".

3 SECTION 2. AMENDATORY 21 O.S. 2001, Section 852.1, as  
4 last amended by Section 122, Chapter 234, O.S.L. 2009 (21 O.S. Supp.  
5 2010, Section 852.1), is amended to read as follows:

6 Section 852.1 A. A person who is the parent, guardian, or  
7 person having custody or control over a child as defined in Section  
8 1-1-105 of Title 10A of the Oklahoma Statutes, commits child  
9 endangerment when the person:

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

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

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

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

23 However, it is an affirmative defense to this paragraph if the  
24 person had a reasonable apprehension that any action to stop the

1 physical or sexual abuse or deny permission for the child to be in  
2 the vehicle with an intoxicated person would result in substantial  
3 bodily harm to the person or the child.

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

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

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

20 SECTION 3. AMENDATORY 47 O.S. 2001, Section 11-902, as  
21 last amended by Section 3, Chapter 310, O.S.L. 2009 (47 O.S. Supp.  
22 2010, Section 11-902), is amended to read as follows:

23 Section 11-902. A. It is unlawful and punishable as provided  
24 in this section for any person to drive, operate, or be in actual

1 physical control of a motor vehicle within this state, whether upon  
2 public roads, highways, streets, turnpikes, other public places or  
3 upon any private road, street, alley or lane which provides access  
4 to one or more single or multi-family dwellings, who:

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

9 2. Is under the influence of alcohol;

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

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

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

21 C. 1. Any person who is convicted of a violation of the  
22 provisions of this section shall be ~~deemed~~ guilty of a misdemeanor  
23 for the first offense and shall participate in an assessment and  
24 evaluation ~~by an assessment agency or assessment personnel certified~~

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

9 2. Any person who, during the period of any court-imposed  
10 probationary term or within ten (10) years after a previous  
11 ~~conviction of~~ the date following the completion of the execution of  
12 any sentence or deferred judgment for a violation of this section or  
13 a violation pursuant to the provisions of any law of this state or  
14 another state prohibiting the ~~offense~~ offenses provided in  
15 subsection A of this section, ~~is convicted of~~ Section 11-904 of this  
16 title or paragraph 4 of subsection A of Section 852.1 of Title 21 of  
17 the Oklahoma Statutes, commits a second offense pursuant to the  
18 provisions of this section or has a prior conviction in a municipal  
19 criminal court of record for the violation of a municipal ordinance  
20 prohibiting the offense provided for in subsection A of this section  
21 and within ten (10) years of ~~such municipal conviction is convicted~~  
22 the date following the completion of the execution of such sentence  
23 or deferred judgment commits a second offense pursuant to the  
24 ~~provision~~ provisions of this section shall, upon conviction, be

1 ~~deemed~~ guilty of a felony and shall participate in an assessment and  
2 evaluation ~~by an assessment agency or assessment personnel certified~~  
3 ~~by the Department of Mental Health and Substance Abuse Services~~  
4 ~~pursuant to Section 3-460 of Title 43A of the Oklahoma Statutes~~  
5 pursuant to subsection G of this section and shall be sentenced to:

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

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

20           3. Any person who is convicted of a second felony offense  
21 pursuant to the provisions of this section or a violation pursuant  
22 to the provisions of any law of this state or another state  
23 prohibiting the offenses provided for in subsection A of this  
24 section, Section 11-904 of this title or paragraph 4 of subsection A

1 of Section 852.1 of Title 21 of the Oklahoma Statutes 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~~ pursuant to subsection G of this section  
6 and shall be sentenced to:

- 7 a. follow all recommendations made in the assessment and  
8 evaluation for treatment at the defendant's expense,  
9 two hundred forty (240) hours of community service and  
10 use of an ignition interlock device, or  
11 b. placement in the custody of the Department of  
12 Corrections for not less than one (1) year and not to  
13 exceed ten (10) years and a fine of not more than Five  
14 Thousand Dollars (\$5,000.00), or  
15 c. treatment, imprisonment and a fine within the  
16 limitations prescribed in subparagraphs a and b of  
17 this paragraph.

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

22 4. Any person who is convicted of a third or subsequent felony  
23 offense pursuant to the provisions of this section or a violation  
24 pursuant to the provisions of any law of this state or another state

1 prohibiting the offenses provided for in subsection A of this  
2 section, Section 11-904 of this title or paragraph 4 of subsection A  
3 of Section 852.1 of Title 21 of the Oklahoma Statutes shall  
4 participate in an assessment and evaluation ~~by an assessment agency~~  
5 ~~or assessment personnel certified by the Department of Mental Health~~  
6 ~~and Substance Abuse Services pursuant to Section 3-460 of Title 43A~~  
7 ~~of the Oklahoma Statutes~~ pursuant to subsection G of this section  
8 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, 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 twenty (20) years and a fine of not more than  
19 Five 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 person does not undergo residential or inpatient  
24 treatment pursuant to ~~subparagraph a~~ subsection G of this ~~paragraph~~

1 section the person shall serve a term of imprisonment of at least  
2 ten (10) days.

3 5. Any person who, ~~within ten (10) years~~ after a previous  
4 conviction of a violation of murder in the second degree or  
5 manslaughter in the first degree in which the death was caused as a  
6 result of driving under the influence of alcohol or other  
7 intoxicating substance, is convicted of a violation of this section  
8 shall be ~~deemed~~ guilty of a felony and shall be punished by  
9 imprisonment in the custody of the Department of Corrections for not  
10 less than five (5) years and not to exceed twenty (20) years, and a  
11 fine of not more than Ten Thousand Dollars (\$10,000.00).

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

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

23 D. Any person who is convicted of a violation of driving under  
24 the influence with a blood or breath alcohol concentration of

1 fifteen-hundredths (0.15) or more pursuant to this section shall be  
2 deemed guilty of aggravated driving under the influence. A person  
3 convicted of aggravated driving under the influence shall  
4 participate in an assessment and evaluation ~~by an assessment agency~~  
5 ~~or assessment personnel certified by the Department of Mental Health~~  
6 ~~and Substance Abuse Services pursuant to Section 3-460 of Title 43A~~  
7 ~~of the Oklahoma Statutes~~ pursuant to subsection G of this section  
8 and shall comply with all recommendations for treatment. Such  
9 person shall be sentenced to not less than one (1) year of  
10 supervision and periodic testing at the defendant's expense, ~~four~~  
11 ~~hundred eighty (480) hours of community service,~~ and an ignition  
12 interlock device for a minimum of ~~thirty (30)~~ ninety (90) days.  
13 Nothing in this subsection shall preclude the defendant from being  
14 charged or punished as provided in paragraph 1, 2, 3, 4 or 5 of  
15 subsection C of this section. Any person who is convicted pursuant  
16 to the provisions of this subsection shall be guilty of a  
17 misdemeanor for a first offense and shall be punished as provided in  
18 paragraph 1 of subsection C of this section. Any person who, during  
19 the period of any court-imposed probationary term or within ten (10)  
20 years of the completion of the execution of any sentence or deferred  
21 judgment, commits a second violation of this subsection shall, upon  
22 conviction, be guilty of a felony and shall be punished as provided  
23 in paragraph 2 of subsection C of this section. Any person who  
24 commits a second felony offense pursuant to this subsection shall,

1 upon conviction, be guilty of a felony and shall be punished as  
2 provided in paragraph 3 of subsection C of this section. Any person  
3 who commits a third or subsequent felony offense pursuant to the  
4 provisions of this subsection shall, upon conviction, be guilty of a  
5 felony and shall be punished as provided in paragraph 4 of  
6 subsection C of this section.

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

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

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

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

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

1 assessment program offered by a certified assessment agency or  
2 certified assessor for the purpose of evaluating and assessing the  
3 receptivity to treatment and prognosis of the person and shall, at  
4 the expense of the defendant, follow all recommendations made in the  
5 assessment and evaluation for treatment. The court shall order the  
6 person to reimburse the agency or assessor for the evaluation and  
7 assessment. The fee for an evaluation and assessment shall be the  
8 amount provided in subsection C of Section 3-460 of Title 43A of the  
9 Oklahoma Statutes. The evaluation and assessment shall be conducted  
10 at a certified assessment agency, the office of a certified assessor  
11 or at another location as ordered by the court. The agency or  
12 assessor shall, within seventy-two (72) hours from the time the  
13 person is evaluated and assessed, submit a written report to the  
14 court for the purpose of assisting the court in its ~~final~~ sentencing  
15 determination. The court shall, as a condition of any sentence  
16 imposed, including deferred and suspended sentences, require the  
17 person to participate in and successfully complete all  
18 recommendations from the evaluation, such as an alcohol and  
19 substance abuse treatment program pursuant to Section 3-452 of Title  
20 43A of the Oklahoma Statutes. 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~~ shall be required to submit to  
18 electronic monitoring as authorized and defined by Section 991a of  
19 Title 22 of 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.~~ K. 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.~~ L. 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 or  
7 Section 11-904 of this title.

8 M. Any plea of guilty, nolo contendere or finding of guilt for  
9 a violation of this section or a violation pursuant to the  
10 provisions of any law of this state or another state prohibiting the  
11 offenses provided for in subsection A of this section, Section 11-  
12 904 of this title, or paragraph 4 of subsection A of Section 852.1  
13 of Title 21 of the Oklahoma Statutes, shall constitute a conviction  
14 of the offense for the purpose of this section for a period of ten  
15 (10) years following the completion of any court-imposed  
16 probationary term.

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

22 1. The results of any standardized field sobriety test  
23 including, but not limited to, the horizontal gaze nystagmus (HGN)  
24

1 test administered by a person who has completed training in  
2 standardized field sobriety testing; or

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

9 SECTION 4. This act shall become effective November 1, 2011.

10

11 53-1-7718 GRS 05/09/11

12

13

14

15

16

17

18

19

20

21

22

23

24