

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2216

6 By: Derby

7 COMMITTEE SUBSTITUTE

8 An Act relating to motor vehicles; amending 47 O.S.
9 2011, Section 11-902, as amended by Section 13,
10 Chapter 11, O.S.L. 2012 (47 O.S. Supp. 2012, Section
11 11-902), which relates to penalties for driving under
12 the influence; making certain acts unlawful; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as
16 amended by Section 13, Chapter 11, O.S.L. 2012 (47 O.S. Supp. 2012,
17 Section 11-902), is amended to read as follows:

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

24 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

1 time of a test of such person's blood or breath administered within
2 two (2) hours after the arrest of such person;

3 2. Is under the influence of alcohol;

4 3. Has any amount of a Schedule I chemical or controlled
5 substance, as defined in Section 2-204 of Title 63 of the Oklahoma
6 Statutes, or one of its metabolites or analogs in the person's
7 blood, saliva, urine or any other bodily fluid at the time of a test
8 of such person's blood, saliva, urine or any other bodily fluid
9 administered within two (2) hours after the arrest of such person;

10 4. Has any amount of a Schedule II, III or IV chemical or
11 controlled substance, as defined in Sections 2-206, 2-208 or 2-210
12 of Title 63 of the Oklahoma Statutes, or one of its metabolites or
13 analog in the person's blood, saliva, urine or any other bodily
14 fluid at the time of a test of such person's blood, saliva, urine or
15 any other bodily fluid administered within two (2) hours after the
16 arrest of such person. The fact that a person charged with
17 violating this provision consumed the controlled substance pursuant
18 to a prescription issued by a licensed health professional
19 authorized to prescribe controlled substances and injected, ingested
20 or inhaled the controlled substance in accordance with the
21 directions of the health professional may constitute an absolute,
22 affirmative defense against any charge of violating this paragraph
23 related to that particular controlled substance, but shall not

1 constitute a defense to any other substance or any other paragraph
2 under this subsection;

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

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

9 B. ~~The~~ With the exception of paragraph 4 of subsection A of
10 this section, the fact that any person charged with a violation of
11 this section is or has been lawfully entitled to use alcohol ~~or,~~ a
12 controlled dangerous substance, controlled substance or any other
13 intoxicating substance shall not constitute a defense against any
14 charge of violating this section.

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

18 a. participate in an assessment and evaluation pursuant
19 to subsection G of this section and shall follow all
20 recommendations made in the assessment and evaluation,

21 b. be punished by imprisonment in jail for not less than
22 ten (10) days nor more than one (1) year, and

23 c. be fined not more than One Thousand Dollars
24 (\$1,000.00).

1 2. Any person who, during the period of any court-imposed
2 probationary term or within ten (10) years of the date following the
3 completion of the execution of any sentence or deferred judgment for
4 a violation of this section or a violation pursuant to the
5 provisions of any law of this state or another state prohibiting the
6 offenses provided in subsection A of this section, Section 11-904 of
7 this title or paragraph 4 of subsection A of Section 852.1 of Title
8 21 of the Oklahoma Statutes, commits a second offense pursuant to
9 the provisions of this section or has a prior conviction in a
10 municipal criminal court of record for the violation of a municipal
11 ordinance prohibiting the offense provided for in subsection A of
12 this section and within ten (10) years of the date following the
13 completion of the execution of such sentence or deferred judgment
14 commits a second offense pursuant to the provisions of this section
15 shall, upon conviction, be guilty of a felony and shall participate
16 in an assessment and evaluation pursuant to subsection G of this
17 section and shall be sentenced to:

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

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

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

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

8 3. Any person who is convicted of a second felony offense
9 pursuant to the provisions of this section or a violation pursuant
10 to the provisions of any law of this state or another state
11 prohibiting the offenses provided for in subsection A of this
12 section, Section 11-904 of this title or paragraph 4 of subsection A
13 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
14 participate in an assessment and evaluation pursuant to subsection G
15 of this section and shall be sentenced to:

- 16 a. follow all recommendations made in the assessment and
17 evaluation for treatment at the defendant's expense,
18 two hundred forty (240) hours of community service and
19 use of an ignition interlock device, as provided by
20 subparagraph n of paragraph 1 of subsection A of
21 Section 991a of Title 22 of the Oklahoma Statutes, or
22 b. placement in the custody of the Department of
23 Corrections for not less than one (1) year and not to
24

1 exceed ten (10) years and a fine of not more than Five
2 Thousand Dollars (\$5,000.00), or

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

6 However, if the treatment in subsection G of this section does
7 not include residential or inpatient treatment for a period of not
8 less than ten (10) days, the person shall serve a term of
9 imprisonment of at least ten (10) days.

10 4. Any person who is convicted of a third or subsequent felony
11 offense pursuant to the provisions of this section or a violation
12 pursuant to the provisions of any law of this state or another state
13 prohibiting the offenses provided for in subsection A of this
14 section, Section 11-904 of this title or paragraph 4 of subsection A
15 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
16 participate in an assessment and evaluation pursuant to subsection G
17 of this section and shall be sentenced to:

18 a. follow all recommendations made in the assessment and
19 evaluation for treatment at the defendant's expense,
20 followed by not less than one (1) year of supervision
21 and periodic testing at the defendant's expense, four
22 hundred eighty (480) hours of community service, and
23 use of an ignition interlock device, as provided by
24 subparagraph n of paragraph 1 of subsection A of

1 Section 991a of Title 22 of the Oklahoma Statutes, for
2 a minimum of thirty (30) days, or

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

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

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

13 5. Any person who, after a previous conviction of a violation
14 of murder in the second degree or manslaughter in the first degree
15 in which the death was caused as a result of driving under the
16 influence of alcohol or other intoxicating substance, is convicted
17 of a violation of this section shall be guilty of a felony and shall
18 be punished by imprisonment in the custody of the Department of
19 Corrections for not less than five (5) years and not to exceed
20 twenty (20) years, and a fine of not more than Ten Thousand Dollars
21 (\$10,000.00).

22 6. Provided, however, a conviction from another state shall not
23 be used to enhance punishment pursuant to the provisions of this
24

1 subsection if that conviction is based on a blood or breath alcohol
2 concentration of less than eight-hundredths (0.08).

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

10 D. Any person who is convicted of a violation of driving under
11 the influence with a blood or breath alcohol concentration of
12 fifteen-hundredths (0.15) or more pursuant to this section shall be
13 deemed guilty of aggravated driving under the influence. A person
14 convicted of aggravated driving under the influence shall
15 participate in an assessment and evaluation pursuant to subsection G
16 of this section and shall comply with all recommendations for
17 treatment. Such person shall be sentenced to:

18 1. Not less than one (1) year of supervision and periodic
19 testing at the defendant's expense; and

20 2. An ignition interlock device or devices, as provided by
21 subparagraph n of paragraph 1 of subsection A of Section 991a of
22 Title 22 of the Oklahoma Statutes, for a minimum of ninety (90)
23 days.

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1 Nothing in this subsection shall preclude the defendant from
2 being charged or punished as provided in paragraph 1, 2, 3, 4 or 5
3 of subsection C of this section. Any person who is convicted
4 pursuant to the provisions of this subsection shall be guilty of a
5 misdemeanor for a first offense and shall be punished as provided in
6 paragraph 1 of subsection C of this section. Any person who, during
7 the period of any court-imposed probationary term or within ten (10)
8 years of the completion of the execution of any sentence or deferred
9 judgment, commits a second violation of this subsection shall, upon
10 conviction, be guilty of a felony and shall be punished as provided
11 in paragraph 2 of subsection C of this section. Any person who
12 commits a second felony offense pursuant to this subsection shall,
13 upon conviction, be guilty of a felony and shall be punished as
14 provided in paragraph 3 of subsection C of this section. Any person
15 who commits a third or subsequent felony offense pursuant to the
16 provisions of this subsection shall, upon conviction, be guilty of a
17 felony and shall be punished as provided in paragraph 4 of
18 subsection C of this section.

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

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

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

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

10 G. Any person who is found guilty of a violation of the
11 provisions of this section shall be ordered to participate in an
12 alcohol and drug substance abuse evaluation and assessment program
13 offered by a certified assessment agency or certified assessor for
14 the purpose of evaluating and assessing the receptivity to treatment
15 and prognosis of the person and shall, at the expense of the
16 defendant, follow all recommendations made in the assessment and
17 evaluation for treatment. The court shall order the person to
18 reimburse the agency or assessor for the evaluation and assessment.
19 The fee for an evaluation and assessment shall be the amount
20 provided in subsection C of Section 3-460 of Title 43A of the
21 Oklahoma Statutes. The evaluation and assessment shall be conducted
22 at a certified assessment agency, the office of a certified assessor
23 or at another location as ordered by the court. The agency or
24 assessor shall, within seventy-two (72) hours from the time the

1 person is evaluated and assessed, submit a written report to the
2 court for the purpose of assisting the court in its sentencing
3 determination. The court shall, as a condition of any sentence
4 imposed, including deferred and suspended sentences, require the
5 person to participate in and successfully complete all
6 recommendations from the evaluation, such as an alcohol and
7 substance abuse treatment program pursuant to Section 3-452 of Title
8 43A of the Oklahoma Statutes. If such report indicates that the
9 evaluation and assessment shows that the defendant would benefit
10 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
11 course or a treatment program or both, the court shall, as a
12 condition of any sentence imposed, including deferred and suspended
13 sentences, require the person to follow all recommendations
14 identified by the evaluation and assessment and ordered by the
15 court. No person, agency or facility operating an evaluation and
16 assessment program certified by the Department of Mental Health and
17 Substance Abuse Services shall solicit or refer any person evaluated
18 and assessed pursuant to this section for any treatment program or
19 substance abuse service in which such person, agency or facility has
20 a vested interest; however, this provision shall not be construed to
21 prohibit the court from ordering participation in or any person from
22 voluntarily utilizing a treatment program or substance abuse service
23 offered by such person, agency or facility. If a person is
24 sentenced to imprisonment in the custody of the Department of

1 Corrections and the court has received a written evaluation report
2 pursuant to the provisions of this subsection, the report shall be
3 furnished to the Department of Corrections with the judgment and
4 sentence. Any evaluation and assessment report submitted to the
5 court pursuant to the provisions of this subsection shall be handled
6 in a manner which will keep such report confidential from the
7 general public's review. Nothing contained in this subsection shall
8 be construed to prohibit the court from ordering judgment and
9 sentence in the event the defendant fails or refuses to comply with
10 an order of the court to obtain the evaluation and assessment
11 required by this subsection. If the defendant fails or refuses to
12 comply with an order of the court to obtain the evaluation and
13 assessment, the Department of Public Safety shall not reinstate
14 driving privileges until the defendant has complied in full with
15 such order. Nothing contained in this subsection shall be construed
16 to prohibit the court from ordering judgment and sentence and any
17 other sanction authorized by law for failure or refusal to comply
18 with an order of the court.

19 H. Any person who is found guilty of a violation of the
20 provisions of this section may be required by the court to attend a
21 victims impact panel program, if such a program is offered in the
22 county where the judgment is rendered, and to pay a fee, not less
23 than Fifteen Dollars (\$15.00) nor more than Twenty-five Dollars
24 (\$25.00) as set by the governing authority of the program and

1 approved by the court, to the program to offset the cost of
2 participation by the defendant, if in the opinion of the court the
3 defendant has the ability to pay such fee.

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

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

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

18 L. 1. When a person is eighteen (18) years of age or older,
19 and is the driver, operator, or person in physical control of a
20 vehicle, and is convicted of violating any provision of this section
21 while transporting or having in the motor vehicle any child less
22 than eighteen (18) years of age, the fine shall be enhanced to
23 double the amount of the fine imposed for the underlying driving
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1 under the influence (DUI) violation which shall be in addition to
2 any other penalties allowed by this section.

3 2. Nothing in this subsection shall prohibit the prosecution of
4 a person pursuant to Section 852.1 of Title 21 of the Oklahoma
5 Statutes who is in violation of any provision of this section or
6 Section 11-904 of this title.

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

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

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

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

7 SECTION 2. This act shall become effective November 1, 2013.

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