

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2216

By: Derby

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9 COMMITTEE SUBSTITUTE

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

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

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

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

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

7 2. Is under the influence of alcohol;

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

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

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

10 ~~4.~~ 6. Is under the combined influence of alcohol and any other
11 intoxicating substance which may render such person incapable of
12 safely driving or operating a motor vehicle.

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

19 C. 1. Any person who is convicted of a violation of the
20 provisions of this section shall be guilty of a misdemeanor for the
21 first offense and shall:
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- 1 a. participate in an assessment and evaluation pursuant
2 to subsection G of this section and shall follow all
3 recommendations made in the assessment and evaluation,
4 b. be punished by imprisonment in jail for not less than
5 ten (10) days nor more than one (1) year, and
6 c. be fined not more than One Thousand Dollars
7 (\$1,000.00).

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

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

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

17 3. Any person who is convicted of a second felony offense
18 pursuant to the provisions of this section or a violation pursuant
19 to the provisions of any law of this state or another state
20 prohibiting the offenses provided for in subsection A of this
21 section, Section 11-904 of this title or paragraph 4 of subsection A
22 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
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1 participate in an assessment and evaluation pursuant to subsection G
2 of this section and shall be sentenced to:

- 3 a. follow all recommendations made in the assessment and
4 evaluation for treatment at the defendant's expense,
5 two hundred forty (240) hours of community service and
6 use of an ignition interlock device, as provided by
7 subparagraph n of paragraph 1 of subsection A of
8 Section 991a of Title 22 of the Oklahoma Statutes, 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 ten (10) years and a fine of not more than Five
12 Thousand Dollars (\$5,000.00), 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 subsection G of this section does
17 not include residential or inpatient treatment for a period of not
18 less than ten (10) days, the person shall serve a term of
19 imprisonment of at least ten (10) days.

20 4. Any person who is convicted of a third or subsequent felony
21 offense pursuant to the provisions of this section or a violation
22 pursuant to the provisions of any law of this state or another state
23 prohibiting the offenses provided for in subsection A of this
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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 section, Section 11-904 of this title or paragraph 4 of subsection A
2 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
3 participate in an assessment and evaluation pursuant to subsection G
4 of this section and shall be sentenced to:

- 5 a. follow all recommendations made in the assessment and
6 evaluation for treatment at the defendant's expense,
7 followed by not less than one (1) year of supervision
8 and periodic testing at the defendant's expense, four
9 hundred eighty (480) hours of community service, and
10 use of an ignition interlock device, as provided by
11 subparagraph n of paragraph 1 of subsection A of
12 Section 991a of Title 22 of the Oklahoma Statutes, for
13 a minimum of thirty (30) days, or
- 14 b. placement in the custody of the Department of
15 Corrections for not less than one (1) year and not to
16 exceed twenty (20) years and a fine of not more than
17 Five Thousand Dollars (\$5,000.00), or
- 18 c. treatment, imprisonment and a fine within the
19 limitations prescribed in subparagraphs a and b of
20 this paragraph.

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

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

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
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1 deemed guilty of aggravated driving under the influence. A person
2 convicted of aggravated driving under the influence shall
3 participate in an assessment and evaluation pursuant to subsection G
4 of this section and shall comply with all recommendations for
5 treatment. Such person shall be sentenced to:

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

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

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

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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 an
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1 alcohol and drug substance abuse evaluation and assessment program
2 offered by a certified assessment agency or certified assessor for
3 the purpose of evaluating and assessing the receptivity to treatment
4 and prognosis of the person and shall, at the expense of the
5 defendant, follow all recommendations made in the assessment and
6 evaluation for treatment. The court shall order the person to
7 reimburse the agency or assessor for the evaluation and assessment.
8 The fee for an evaluation and assessment shall be the amount
9 provided in subsection C of Section 3-460 of Title 43A of the
10 Oklahoma Statutes. The evaluation and assessment shall be conducted
11 at a certified assessment agency, the office of a certified assessor
12 or at another location as ordered by the court. The agency or
13 assessor shall, within seventy-two (72) hours from the time the
14 person is evaluated and assessed, submit a written report to the
15 court for the purpose of assisting the court in its sentencing
16 determination. The court shall, as a condition of any sentence
17 imposed, including deferred and suspended sentences, require the
18 person to participate in and successfully complete all
19 recommendations from the evaluation, such as an alcohol and
20 substance abuse treatment program pursuant to Section 3-452 of Title
21 43A of the Oklahoma Statutes. If such report indicates that the
22 evaluation and assessment shows that the defendant would benefit
23 from a ten-hour or twenty-four-hour alcohol and drug substance abuse

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

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

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

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

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

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

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

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

1 M. Any plea of guilty, nolo contendere or finding of guilt for
2 a violation of this section or a violation pursuant to the
3 provisions of any law of this state or another state prohibiting the
4 offenses provided for in subsection A of this section, Section 11-
5 904 of this title, or paragraph 4 of subsection A of Section 852.1
6 of Title 21 of the Oklahoma Statutes, shall constitute a conviction
7 of the offense for the purpose of this section for a period of ten
8 (10) years following the completion of any court-imposed
9 probationary term.

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

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

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

3 SECTION 2. This act shall become effective November 1, 2013.
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5 COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 02/28/2013 -
6 DO PASS, As Amended.
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