

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2663

By: Derby

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5  
6 AS INTRODUCED

7 An Act relating to motor vehicles; making certain  
8 acts unlawful; providing penalties; directing the  
9 Department of Corrections to classify and assign  
10 inmates to certain facility; providing for driver  
11 license reinstatement under certain circumstances;  
12 making participation in certain evaluation and  
13 assessment program mandatory; providing procedures  
14 for evaluating and assessing offenders; providing  
15 additional sentencing options and requirements for  
16 offenders; authorizing certain witnesses to offer  
17 testimony regarding impairment; providing for  
18 codification; and providing an effective date.

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

20 SECTION 1. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 11-907 of Title 47, unless there  
22 is created a duplication in numbering, reads as follows:

23 DRIVING UNDER THE INFLUENCE OF ANY INTOXICATING SUBSTANCE

24 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 upon any

1 private road, street, alley or lane which provides access to one or  
2 more single or multifamily dwellings, who:

3 1. 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 2. 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 fact that any person charged with a violation of this  
10 section is or has been lawfully entitled to use a controlled  
11 dangerous substance or any other intoxicating substance shall not  
12 constitute a defense against any charge of violating this section.

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

16 a. participate in an assessment and evaluation pursuant  
17 to subsection F of this section and shall follow all  
18 recommendations made in the assessment and evaluation,

19 b. be punished by imprisonment in jail for not less than  
20 ten (10) days nor more than one (1) year, or

21 c. be fined not more than One Thousand Dollars  
22 (\$1,000.00).

23 2. Any person who, during the period of any court-imposed  
24 probationary term or within ten (10) years of the date following the

1 completion of the execution of any sentence or deferred judgment 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 in subsection A of this section, Section 11-904 of  
5 Title 47 of the Oklahoma Statutes or paragraph 4 of subsection A of  
6 Section 852.1 of Title 21 of the Oklahoma Statutes, commits a second  
7 offense pursuant to the provisions of this section or has a prior  
8 conviction in a municipal criminal court of record for the violation  
9 of a municipal ordinance prohibiting the offense provided for in  
10 subsection A of this section and within ten (10) years of the date  
11 following the completion of the execution of such sentence or  
12 deferred judgment commits a second offense pursuant to the  
13 provisions of this section shall, upon conviction, be guilty of a  
14 felony and shall participate in an assessment and evaluation  
15 pursuant to subsection F 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 or
- 19 b. placement in the custody of the Department of  
20 Corrections for not less than one (1) year and not to  
21 exceed five (5) years and a fine of not more than Two  
22 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 F 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 Title 47 of the Oklahoma Statutes or  
13 paragraph 4 of subsection A of Section 852.1 of Title 21 of the  
14 Oklahoma Statutes shall participate in an assessment and evaluation  
15 pursuant to subsection F 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 F 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 Title 47 of the Oklahoma Statutes or  
15 paragraph 4 of subsection A of Section 852.1 of Title 21 of the  
16 Oklahoma Statutes shall participate in an assessment and evaluation  
17 pursuant to subsection F 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 F 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 any intoxicating substance, is convicted of a violation  
17 of this section shall be guilty of a felony and shall be punished by  
18 imprisonment in the custody of the Department of Corrections for not  
19 less than five (5) years and not to exceed twenty (20) years, and a  
20 fine of not more than Ten Thousand Dollars (\$10,000.00).

21 6. In any case in which a defendant is charged with a second or  
22 subsequent driving under the influence of an intoxicating substance  
23 offense within any municipality with a municipal court other than a  
24 court of record, the charge shall be presented to the county's

1 district attorney and filed with the district court of the county  
2 within which the municipality is located.

3 D. When a person is sentenced to imprisonment in the custody of  
4 the Department of Corrections, the person shall be processed through  
5 the Lexington Assessment and Reception Center or at a place  
6 determined by the Director of the Department of Corrections. The  
7 Department of Corrections shall classify and assign the person to  
8 one or more of the following:

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

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

14 E. The Department of Public Safety is hereby authorized to  
15 reinstate any suspended or revoked driving privilege when the person  
16 meets the statutory requirements which affect the existing driving  
17 privilege.

18 F. Any person who is found guilty of a violation of the  
19 provisions of this section shall be ordered to participate in an  
20 alcohol and drug substance abuse evaluation and assessment program  
21 offered by a certified assessment agency or certified assessor for  
22 the purpose of evaluating and assessing the receptivity to treatment  
23 and prognosis of the person and shall, at the expense of the  
24 defendant, follow all recommendations made in the assessment and

1 evaluation for treatment. The court shall order the person to  
2 reimburse the agency or assessor for the evaluation and assessment.  
3 The fee for an evaluation and assessment shall be the amount  
4 provided in subsection C of Section 3-460 of Title 43A of the  
5 Oklahoma Statutes. The evaluation and assessment shall be conducted  
6 at a certified assessment agency, the office of a certified assessor  
7 or at another location as ordered by the court. The agency or  
8 assessor shall, within seventy-two (72) hours from the time the  
9 person is evaluated and assessed, submit a written report to the  
10 court for the purpose of assisting the court in its sentencing  
11 determination. The court shall, as a condition of any sentence  
12 imposed, including deferred and suspended sentences, require the  
13 person to participate in and successfully complete all  
14 recommendations from the evaluation, such as an alcohol and  
15 substance abuse treatment program pursuant to Section 3-452 of Title  
16 43A of the Oklahoma Statutes. If such report indicates that the  
17 evaluation and assessment shows that the defendant would benefit  
18 from a ten-hour or twenty-four-hour alcohol and drug substance abuse  
19 course or a treatment program or both, the court shall, as a  
20 condition of any sentence imposed, including deferred and suspended  
21 sentences, require the person to follow all recommendations  
22 identified by the evaluation and assessment and ordered by the  
23 court. No person, agency or facility operating an evaluation and  
24 assessment program certified by the Department of Mental Health and

1 Substance Abuse Services shall solicit or refer any person evaluated  
2 and assessed pursuant to this section for any treatment program or  
3 substance abuse service in which such person, agency or facility has  
4 a vested interest; however, this provision shall not be construed to  
5 prohibit the court from ordering participation in or any person from  
6 voluntarily utilizing a treatment program or substance abuse service  
7 offered by such person, agency or facility. If a person is  
8 sentenced to imprisonment in the custody of the Department of  
9 Corrections and the court has received a written evaluation report  
10 pursuant to the provisions of this subsection, the report shall be  
11 furnished to the Department of Corrections with the judgment and  
12 sentence. Any evaluation and assessment report submitted to the  
13 court pursuant to the provisions of this subsection shall be handled  
14 in a manner which will keep such report confidential from the  
15 general public's review. Nothing contained in this subsection shall  
16 be construed to prohibit the court from ordering judgment and  
17 sentence in the event the defendant fails or refuses to comply with  
18 an order of the court to obtain the evaluation and assessment  
19 required by this subsection. If the defendant fails or refuses to  
20 comply with an order of the court to obtain the evaluation and  
21 assessment, the Department of Public Safety shall not reinstate  
22 driving privileges until the defendant has complied in full with  
23 such order. Nothing contained in this subsection shall be construed  
24 to prohibit the court from ordering judgment and sentence and any

1 other sanction authorized by law for failure or refusal to comply  
2 with an order of the court.

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

12 H. Any person who is found guilty of a felony violation of the  
13 provisions of this section shall be required to submit to electronic  
14 monitoring as authorized and defined by Section 991a of Title 22 of  
15 the Oklahoma Statutes.

16 I. Any person who is found guilty of a violation of the  
17 provisions of this section who has been sentenced by the court to  
18 perform any type of community service shall not be permitted to pay  
19 a fine in lieu of performing the community service.

20 J. When a person is found guilty of a violation of the  
21 provisions of this section, the court shall order, in addition to  
22 any other penalty, the defendant to pay a one-hundred-dollar  
23 assessment to be deposited, upon collection, in the Drug Abuse  
24

1 Education and Treatment Revolving Fund created in Section 2-503.2 of  
2 Title 63 of the Oklahoma Statutes.

3 K. 1. When a person is eighteen (18) years of age or older,  
4 and is the driver, operator, or person in physical control of a  
5 vehicle, and is convicted of violating any provision of this section  
6 while transporting or having in the motor vehicle any child less  
7 than eighteen (18) years of age, the fine shall be enhanced to  
8 double the amount of the fine imposed for the underlying driving  
9 under the influence of an intoxicating substance violation which  
10 shall be in addition to any other penalties allowed by this section.

11 2. Nothing in this subsection shall prohibit the prosecution of  
12 a person pursuant to Section 852.1 of Title 21 of the Oklahoma  
13 Statutes who is in violation of any provision of this section or  
14 Section 11-904 of Title 47 of the Oklahoma Statutes.

15 L. Any plea of guilty, nolo contendere or finding of guilt for  
16 a violation of this section or a violation pursuant to the  
17 provisions of any law of this state or another state prohibiting the  
18 offenses provided for in subsection A of this section, Section 11-  
19 904 of Title 47 of the Oklahoma Statutes, or paragraph 4 of  
20 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes  
21 shall constitute a conviction of the offense for the purpose of this  
22 section for a period of ten (10) years following the completion of  
23 any court-imposed probationary term.

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

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

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

16 SECTION 2. This act shall become effective November 1, 2014.

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