ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 58 By: David of the Senate

and

Billy of the House

[impaired driving of motor vehicles - punishments - deferral - jurisdiction - effective date]

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"[driving under the influence of alcohol or other intoxicating substances - creating the Impaired Driving Elimination Act - requiring certain arrest reports be completed and entered into impaired driver database - remitting assessment to the Oklahoma Impaired Driver Database Revolving Fund - authorizing Commissioner of the Department of Public Safety to oversee creation of certain database - providing for assistance from the Office of Management and Enterprise Services - creating the Oklahoma Impaired Driver Database Revolving Fund - 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:

This act shall be known and may be cited as the "Impaired Driving Elimination Act" (IDEA).

SECTION 2. AMENDATORY 11 O.S. 2011, Section 14-111, is amended to read as follows:

Section 14-111. A. The governing body of a municipality may provide for enforcement of its ordinances and establish fines, penalties, or imprisonment, as authorized by subsections B through D of this section, for any offense in violation of its ordinances, which shall be recoverable together with costs of suit. The governing body may provide that any person fined for violation of a municipal ordinance who is financially able but refuses or neglects to pay the fine or costs may be compelled to satisfy the amount owed by working on the streets, alleys, avenues, areas, and public grounds of the municipality, subject to the direction of the street commissioner or other proper officer, at a rate per day as the governing body may prescribe by ordinance, but not less than Fifty Dollars ($50.00) per day for useful labor, until the fine or costs are satisfied.

B. 1. Except for municipal ordinances related to prostitution and as otherwise provided in this section, cities having a municipal criminal court of record may enact ordinances prescribing maximum

fines of One Thousand Two Hundred Dollars ($1,200.00) and costs or imprisonment not exceeding six (6) months or both the fine and imprisonment, but shall not have authority to enact any ordinance making unlawful an act or omission declared by state statute to be punishable as a felony. Cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding six (6) months or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges. Cities having a municipal criminal court of record may enact ordinances prescribing maximum fines of One Thousand Two Hundred Fifty Dollars ($1,250.00) and costs or imprisonment not exceeding six (6) months or both such fine and imprisonment for alcohol-related or drug-related traffic offenses. The court shall remit Fifty Dollars ($50.00) of each alcohol fine or deferral fee to a fund of the municipality that shall be used to defray costs for enforcement of laws relating to juvenile access to alcohol, other laws relating to alcohol and other intoxicating substances, and traffic-related offenses involving alcohol or other intoxicating substances. <u>The sum of Fifteen Dollars ($15.00) shall be assessed in every case for violations of municipal ordinances relating to the offense of driving under the influence of alcohol or other intoxicating substance and shall be</u>

remitted to the credit of the Oklahoma Impaired Driver Database Revolving Fund created pursuant to Section 8 of this act.

2. For violations of municipal ordinances relating to prostitution, including but not limited to engaging in prostitution or soliciting or procuring prostitution, a municipal criminal court of record may enact ordinances prescribing an imprisonment not to exceed six (6) months, and fines as follows: a fine not to exceed Two Thousand Five Hundred Dollars ($2,500.00) upon the first conviction for violation of any such ordinances, a fine of not more than Five Thousand Dollars ($5,000.00) upon the second conviction for violation of any of such ordinances, and a fine of not more than Seven Thousand Five Hundred Dollars ($7,500.00) upon the third or subsequent convictions for violation of any of such ordinances, or both such fine and imprisonment as well as a term of community service of not less than forty (40) nor more than eighty (80) hours.

C. Municipalities having a municipal court not of record may enact ordinances prescribing maximum fines pursuant to the provisions of this subsection. A municipal ordinance may not impose a penalty, including fine or deferral fee in lieu of a fine and costs, which is greater than that established by statute for the same offense. The maximum fine or deferral fee in lieu of a fine for traffic-related offenses relating to speeding or parking shall not exceed Two Hundred Dollars ($200.00). The maximum fine or deferral fee in lieu of a fine for alcohol-related or drug-related

offenses shall not exceed Eight Hundred Dollars ($800.00). For all other offenses, the maximum fine or deferral fee in lieu of a fine shall not exceed Seven Hundred Fifty Dollars ($750.00). The court shall remit Fifty Dollars ($50.00) of each alcohol fine or deferral fee to a fund of the municipality that shall be used to defray costs for enforcement of laws relating to juvenile access to alcohol, other laws relating to alcohol and other intoxicating substances, and traffic-related offenses involving alcohol or other intoxicating substances. The ordinances may prescribe costs pursuant to the provisions of Section 27-126 of this title or imprisonment not exceeding sixty (60) days or both the fine and imprisonment; provided, that municipalities having only a municipal court not of record shall not have authority to enact any ordinance making unlawful any act or omission declared by state statute to be punishable as a felony; provided further, that municipalities having a municipal court not of record may enact ordinances prescribing maximum fines of One Thousand Dollars ($1,000.00) and costs or imprisonment not exceeding ninety (90) days or both such fine and imprisonment for violations of municipal ordinances regulating the pretreatment of wastewater and regulating stormwater discharges. If imprisonment is available for the offense, then that person charged shall have a right to a jury trial.

D. Municipalities having both municipal criminal courts of record and municipal courts not of record may enact ordinances, within the authority of this section, for each court.

E. No municipality may levy a fine or deferral fee in lieu of a fine of over Fifty Dollars ($50.00) until it has compiled and published its penal ordinances as required in Sections 14-109 and 14-110 of this title.

F. No municipality may levy a fine of more than Ten Dollars ($10.00) nor court costs of more than Fifteen Dollars ($15.00) for exceeding the posted speed limit by no more than ten (10) miles per hour upon any portion of the National System of Interstate and Defense Highways, federal-aid primary highways, and the state highway system which are located on the outskirts of any municipality as determined in Section 2-117 of Title 47 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 34-108 of Title 11, unless there is created a duplication in numbering, reads as follows:

In any case in which a person is arrested for driving under the influence of alcohol or other intoxicating substance, an impaired driver arrest report shall be completed by the municipal law enforcement officer who made the arrest and shall be entered into the impaired driver database created pursuant to Section 8 of this act.

SECTION 4. AMENDATORY 28 O.S. 2011, Section 153, is amended to read as follows:

Section 153. A. The clerks of the courts shall collect as costs in every criminal case for each offense of which the defendant is convicted, irrespective of whether or not the sentence is deferred, the following flat charges and no more, except for standing and parking violations and for charges otherwise provided for by law, which fee shall cover docketing of the case, filing of all papers, issuance of process, warrants, orders, and other services to the date of judgment:

1. For each defendant convicted of exceeding the speed limit by at least one (1) mile per hour but not more than ten (10) miles per hour, whether charged individually or conjointly with others.....$77.00

2. For each defendant convicted of a misdemeanor traffic violation other than an offense provided for in paragraph 1 or 5 of this subsection, whether charged individually or conjointly with others.....$98.00

3. For each defendant convicted of a misdemeanor, other than for driving

under the influence of alcohol or other intoxicating substance or an offense provided for in paragraph 1 or 2 of this subsection, whether charged individually or conjointly with others.....$93.00

4. For each defendant convicted of a felony, other than for driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others.....$103.00

5. For each defendant convicted of the misdemeanor of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others..... $433.00

6. For each defendant convicted of the felony of driving under the influence of alcohol or other intoxicating substance, whether charged individually or conjointly with others.....$433.00

7. For the services of a court reporter at each preliminary hearing and trial held in the case.....$20.00

8. For each time a jury is requested.....$30.00

9. A sheriff's fee for serving or endeavoring to serve each writ, warrant, order, process, command, or notice or pursuing any fugitive from justice

a. within the county..... $50.00, or mileage as established by the Oklahoma Statutes, whichever is greater, or

b. outside of the county..... $50.00, or actual, necessary expenses, whichever is greater

10. For the services of a language interpreter, other than an interpreter appointed pursuant to the provisions of the Oklahoma Interpreter for the Deaf Act, at each hearing held in the case, the actual cost of the interpreter.

B. In addition to the amount collected pursuant to paragraphs 2 through 6 of subsection A of this section, the sum of Six Dollars ($6.00) shall be assessed and credited to the Law Library Fund

pursuant to Section 1201 et seq. of Title 20 of the Oklahoma Statutes.

C. In addition to the amount collected pursuant to subsection A of this section, the sum of Ten Dollars ($10.00) shall be assessed and collected in every traffic case for each offense other than for driving under the influence of alcohol or other intoxicating substance; the sum of Fifteen Dollars ($15.00) shall be assessed and collected in every misdemeanor case for each offense; the sum of Fifteen Dollars ($15.00) shall be assessed and collected in every misdemeanor case for each offense for driving under the influence of alcohol or other intoxicating substance; the sum of Twenty-five Dollars ($25.00) shall be assessed and collected in every felony case for each offense; and the sum of Twenty-five Dollars ($25.00) shall be assessed and collected in every felony case for each offense for driving under the influence of alcohol or other intoxicating substance.

D. In addition to the amounts collected pursuant to subsections A and B of this section, the sum of Twenty-five Dollars ($25.00) shall be assessed and credited to the Oklahoma Court Information System Revolving Fund created pursuant to Section 1315 of Title 20 of the Oklahoma Statutes.

E. In addition to the amount collected pursuant to paragraphs 1 through 6 of subsection A of this section, the sum of Ten Dollars ($10.00) shall be assessed and credited to the Sheriff's Service Fee

Account in the county in which the conviction occurred for the purpose of enhancing existing or providing additional courthouse security.

F. In addition to the amounts collected pursuant to paragraphs 1 through 6 of subsection A of this section, the sum of Three Dollars ($3.00) shall be assessed and credited to the Office of the Attorney General Victim Services Unit.

G. In addition to the amounts collected pursuant to paragraphs 1 through 6 of subsection A of this section, the sum of Three Dollars ($3.00) shall be assessed and credited to the Child Abuse Multidisciplinary Account. This fee shall not be used for purposes of hiring or employing any law enforcement officers.

H. In addition to the amounts collected pursuant to paragraphs 5 and 6 of subsection A of this section, the sum of Fifteen Dollars ($15.00) shall be assessed in every misdemeanor or felony case for each offense of driving under the influence of alcohol or other intoxicating substance and credited to the Oklahoma Impaired Driver Database Revolving Fund created pursuant to Section 8 of this act.

I. Prior to conviction, parties in criminal cases shall not be required to pay, advance, or post security for the services of a language interpreter or for the issuance or service of process to obtain compulsory attendance of witnesses.

~~I.~~ J. The amounts to be assessed as court costs upon filing of a case shall be those amounts above-stated in paragraph 3 or 4 of

subsection A and ~~subsection~~ subsections B, C, D and E of this section.

~~J.~~ K. The fees collected pursuant to this section shall be deposited into the court fund, except the following:

1. A court clerk issuing a misdemeanor warrant is entitled to ten percent (10%) of the sheriff's service fee, provided for in paragraph 9 of subsection A of this section, collected on a warrant referred to the contractor for the misdemeanor warrant notification program governed by Sections 514.4 and 514.5 of Title 19 of the Oklahoma Statutes. This ten-percent sum shall be deposited into the issuing Court Clerk's Revolving Fund, created pursuant to Section 220 of Title 19 of the Oklahoma Statutes, of the court clerk issuing the warrant with the balance of the sheriff's service fee to be deposited into the Sheriff's Service Fee Account, created pursuant to the provisions of Section 514.1 of Title 19 of the Oklahoma Statutes, of the sheriff in the county in which service is made or attempted. Otherwise, the sheriff's service fee, when collected, shall be deposited in its entirety into the Sheriff's Service Fee Account of the sheriff in the county in which service is made or attempted;

2. The sheriff's fee provided for in Section 153.2 of this title;

3. The witness fees paid by the district attorney pursuant to the provisions of Section 82 of this title which, if collected by

the court clerk, shall be transferred to the district attorney's office in the county where witness attendance was required. Fees transferred pursuant to this paragraph shall be deposited in the district attorney's maintenance and operating expense account;

4. The fees provided for in subsection C of this section shall be forwarded to the District Attorneys Council Revolving Fund to defray the costs of prosecution; and

5. The following amounts of the fees provided for in paragraphs 2, 3, 5 and 6 of subsection A of this section, when collected, shall be deposited in the Trauma Care Assistance Revolving Fund, created pursuant to the provisions of Section 1-2530.9 of Title 63 of the Oklahoma Statutes:

a. Ten Dollars ($10.00) of the Ninety-eight-Dollar fee provided for in paragraph 2 of subsection A of this section,

b. Ten Dollars ($10.00) of the Ninety-three-Dollar fee provided for in paragraph 3 of subsection A of this section,

c. One Hundred Dollars ($100.00) of the Four-Hundred-Thirty-three-Dollar fee provided for in paragraph 5 of subsection A of this section, and

d. One Hundred Dollars ($100.00) of the Four-Hundred-Thirty-three-Dollar fee provided for in paragraph 6 of subsection A of this section.

~~K.~~ L. Costs required to be collected pursuant to this section shall not be dismissed or waived; provided, if the court determines that a person needing the services of a language interpreter is indigent, the court may waive all or part of the costs or require the payment of costs in installments.

~~L.~~ M. As used in this section, "convicted" means any final adjudication of guilt, whether pursuant to a plea of guilty or nolo contendere or otherwise, and any deferred judgment or suspended sentence.

~~M.~~ N. A court clerk may accept in payment for any fee, fine, forfeiture payment, cost, penalty assessment or other charge or collection to be assessed or collected by a court clerk pursuant to this section a nationally recognized credit card or debit card or other electronic payment method as provided in paragraph 1 of subsection B of Section 151 of this title.

~~N.~~ O. Upon receipt of payment of fines and costs for offenses charged prior to July 1, 1992, the court clerk shall apportion and pay Thirteen Dollars ($13.00) per conviction to the court fund.

SECTION 5. AMENDATORY 28 O.S. 2011, Section 153.1, is amended to read as follows:

Section 153.1 In any case in which a defendant is charged with driving under the influence of alcohol or other intoxicating substance within a municipality with a municipal court~~, one-half (1/2)~~:

1. Twenty-five percent (25%) of the costs charged in the case as provided for in Section 153 of this title shall be paid to the municipality ~~to be used to defer the cost of such prosecution to the municipality~~ if the arresting officer was an employee of the ~~municipality's~~ law enforcement agency of the municipality; and

2. Twenty-five percent (25%) of the costs charged in the case as provided for in Section 153 of this title shall be paid to the District Attorneys Council Revolving Fund to defray the costs of prosecution.

SECTION 6. AMENDATORY 47 O.S. 2011, Section 11-902, as last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp. 2015, 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 upon any private road, street, alley or lane which provides access to one or more single or multifamily 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. Has any amount of a Schedule I chemical or controlled substance, as defined in Section 2-204 of Title 63 of the Oklahoma Statutes, or one of its metabolites or analogs in the person's blood, saliva, urine or any other bodily fluid at the time of a test of such person's blood, saliva, urine or any other bodily fluid administered within two (2) hours after the arrest of such person;

4. 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

5. 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 guilty of a misdemeanor for the first offense and shall:

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

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

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

2. Any person who, during the period of any court-imposed probationary term or within ten (10) years 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 offenses provided 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, 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 the date following the completion of the execution of such sentence or deferred judgment commits a second offense pursuant to the provisions of this section shall, upon conviction, be guilty of a felony and shall participate in an assessment and evaluation 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 subsection G of this 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 of Section 852.1 of Title 21 of the Oklahoma Statutes shall participate in an assessment and evaluation 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, as provided by

subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, 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 subsection G of this 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 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 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, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, 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.

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

5. Any person who, 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 a violation of this section shall be 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 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 pursuant to subsection G of this section and shall comply with all recommendations for treatment. Such person shall be sentenced to:

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

2. An ignition interlock device or devices, as provided by subparagraph n of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes, for a minimum of 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, during the period of any court-imposed probationary term or within ten (10) years of the completion of the execution of any sentence or deferred judgment, commits a second violation of this subsection shall, upon conviction, 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 commits a third or subsequent felony offense pursuant to the provisions of this subsection shall, upon conviction, 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. Successful completion of a Department-of-Corrections-approved substance abuse treatment program shall satisfy the recommendation for a ten-hour or twenty-four-hour alcohol and drug substance abuse course or treatment program or both. Successful completion of an approved Department of Corrections substance abuse treatment program may precede or follow the required assessment.

F. The Department of Public Safety is hereby authorized to reinstate any suspended or revoked driving privilege when the person 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 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 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. Payment shall be remitted by the defendant or on behalf of the defendant by any third party; provided, no state-appropriated funds are utilized. 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 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 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 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, as defined in subsection H of Section 991a of Title 22 of the Oklahoma Statutes, if such a program is offered in the county where the judgment is rendered, and to pay a fee of not less than Fifteen Dollars ($15.00) nor more than Sixty Dollars ($60.00) 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.

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

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.

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 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 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-902c of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The State Legislature hereby occupies and preempts the entire field of legislation in this state touching in any way the prosecution of offenses relating to driving under the influence of

alcohol or any other intoxicating substance or operating a motor vehicle while impaired to the complete exclusion of any order, ordinance, local legislation or regulation by any municipality or other political subdivision of this state.

B. No municipality or other political subdivision shall prosecute any laws or ordinances relating to the offense of driving under the influence of alcohol or any other intoxicating substance or operating a motor vehicle while impaired. Any existing or future orders, ordinances, local legislation or regulations in violation of this section are void and unenforceable.

C. The preemption provisions of this section shall not apply to prosecutions in municipal criminal courts of record for offenses relating to driving under the influence of alcohol or any other intoxicating substance or operating a motor vehicle while impaired. Nothing in this section shall prohibit a municipality from establishing a municipal criminal court of record pursuant to the provisions of Section 28-101 of Title 11 of the Oklahoma Statutes.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 11-902d of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner of the Department of Public Safety is hereby authorized to oversee the creation, development and implementation of a statewide impaired driver database with

assistance from the Office of Management and Enterprise Services subject to fiscal limitations and the availability of federal funds.

B. In any case in which a person is arrested for driving under the influence of alcohol or any other intoxicating substance, an impaired driver arrest report shall be completed by the law enforcement officer that made the arrest and shall be entered into the impaired driver database. The Commissioner shall prescribe the form and format of the impaired driver arrest report.

C. There is hereby created in the State Treasury a revolving fund for the Department of Public Safety to be designated the "Oklahoma Impaired Driver Database Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the exclusive purpose of implementing, developing, administering and maintaining an impaired driver database. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

SECTION 9. This act shall become effective November 1, 2016."

Passed the House of Representatives the 19th day of April, 2016.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2016.

_____
Presiding Officer of the Senate