

1 ENGROSSED HOUSE
2 BILL NO. 2555

By: Wright and Biggs of the
House

3 and

4 Sykes of the Senate
5

6
7 An Act relating to motor vehicles; amending 47 O.S.
8 2011, Sections 11-902, as last amended by Section 3,
9 Chapter 393, O.S.L. 2013 and 11-904, as amended by
10 Section 1, Chapter 157, O.S.L. 2012 (47 O.S. Supp.
11 2015, Sections 11-902 and 11-904), which relate to
12 penalties for driving or operating a vehicle while
13 under the influence; modifying conditions related to
14 subsequent and multiple convictions for driving under
15 the influence; modifying penalty for causing great
16 bodily injury while driving or operating a vehicle
17 while under the influence; and providing an effective
18 date.

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

20 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as
21 last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
22 2015, Section 11-902), is amended to read as follows:

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

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

5 2. Is under the influence of alcohol;

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

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

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

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

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24

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

- 4 a. participate in an assessment and evaluation pursuant
5 to subsection G of this section and shall follow all
6 recommendations made in the assessment and evaluation,
7 b. be punished by imprisonment in jail for not less than
8 ten (10) days nor more than one (1) year, and
9 c. be fined not more than One Thousand Dollars
10 (\$1,000.00).

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

1 ~~to the provisions~~ subsequent violation of this section within ten
2 (10) years of the date following the completion of the execution of
3 said sentence or deferred judgment, and against whom the district
4 attorney seeks to enhance punishment pursuant to the provision of
5 this section shall, upon conviction, be guilty of a felony and shall
6 participate in an assessment and evaluation pursuant to subsection G
7 of this section and shall be sentenced to:

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

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

22 3. Any person who ~~is convicted of~~ commits a violation of this
23 section after having been convicted of a ~~second~~ felony offense
24 pursuant to the provisions of this section or a violation pursuant

1 to the provisions of any law of this state or another state
2 prohibiting the offenses provided for in ~~subsection A~~ of this
3 section, Section 11-904 of this title or paragraph 4 of subsection A
4 of Section 852.1 of Title 21 of the Oklahoma Statutes, and against
5 whom the district attorney seeks to enhance punishment shall be
6 guilty of a felony and participate in an assessment and evaluation
7 pursuant to subsection G of this section and shall be sentenced to:

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

1 4. Any person who ~~is~~ commits a violation of this section after
2 having been twice convicted of a ~~third or subsequent~~ felony offense
3 pursuant to the provisions of this section or a violation pursuant
4 to the provisions of any law of this state or another state
5 prohibiting the offenses provided for in ~~subsection A~~ of this
6 section, Section 11-904 of this title or paragraph 4 of subsection A
7 of Section 852.1 of Title 21 of the Oklahoma Statutes, and against
8 whom the district attorney seeks to enhance punishment, shall be
9 guilty of a felony and participate in an assessment and evaluation
10 pursuant to subsection G of this section and shall be sentenced to:

11 a. follow all recommendations made in the assessment and
12 evaluation for treatment at the defendant's expense,
13 followed by not less than one (1) year of supervision
14 and periodic testing at the defendant's expense, four
15 hundred eighty (480) hours of community service, and
16 use of an ignition interlock device, as provided by
17 subparagraph n of paragraph 1 of subsection A of
18 Section 991a of Title 22 of the Oklahoma Statutes, for
19 a minimum of thirty (30) days, or

20 b. placement in the custody of the Department of
21 Corrections for not less than one (1) year and not to
22 exceed twenty (20) years and a fine of not more than
23 Five Thousand Dollars (\$5,000.00), or
24

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

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

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

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

1 district court of the county within which the municipality is
2 located.

3 D. Any person who is convicted of a violation of driving under
4 the influence with a blood or breath alcohol concentration of
5 fifteen-hundredths (0.15) or more pursuant to this section shall be
6 deemed guilty of aggravated driving under the influence. A person
7 convicted of aggravated driving under the influence shall
8 participate in an assessment and evaluation pursuant to subsection G
9 of this section and shall comply with all recommendations for
10 treatment. Such person shall be sentenced as provided in paragraph
11 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

18 ~~Nothing in this subsection shall preclude the defendant from~~
19 ~~being charged or punished as provided in paragraph 1, 2, 3, 4 or 5~~
20 ~~of subsection C of this section. Any person who is convicted~~
21 ~~pursuant to the provisions of this subsection shall be guilty of a~~
22 ~~misdemeanor for a first offense and shall be punished as provided in~~
23 ~~paragraph 1 of subsection C of this section. Any person who, during~~
24 ~~the period of any court-imposed probationary term or within ten (10)~~

1 ~~years of the completion of the execution of any sentence or deferred~~
2 ~~judgment, commits a second violation of this subsection shall, upon~~
3 ~~conviction, be guilty of a felony and shall be punished as provided~~
4 ~~in paragraph 2 of subsection C of this section. Any person who~~
5 ~~commits a second felony offense pursuant to this subsection shall,~~
6 ~~upon conviction, be guilty of a felony and shall be punished as~~
7 ~~provided in paragraph 3 of subsection C of this section. Any person~~
8 ~~who commits a third or subsequent felony offense pursuant to the~~
9 ~~provisions of this subsection shall, upon conviction, be guilty of a~~
10 ~~felony and shall be punished as provided in paragraph 4 of~~
11 ~~subsection C of this section.~~

12 E. When a person is sentenced to imprisonment in the custody of
13 the Department of Corrections, the person shall be processed through
14 the Lexington Assessment and Reception Center or at a place
15 determined by the Director of the Department of Corrections. The
16 Department of Corrections shall classify and assign the person to
17 one or more of the following:

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

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

23 Successful completion of a Department-of-Corrections-approved
24 substance abuse treatment program shall satisfy the recommendation

1 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
2 course or treatment program or both. Successful completion of an
3 approved Department of Corrections substance abuse treatment program
4 may precede or follow the required assessment.

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

9 G. Any person who is found guilty of a violation of the
10 provisions of this section shall be ordered to participate in an
11 alcohol and drug substance abuse evaluation and assessment program
12 offered by a certified assessment agency or certified assessor for
13 the purpose of evaluating and assessing the receptivity to treatment
14 and prognosis of the person and shall follow all recommendations
15 made in the assessment and evaluation for treatment. The court
16 shall order the person to reimburse the agency or assessor for the
17 evaluation and assessment. Payment shall be remitted by the
18 defendant or on behalf of the defendant by any third party;
19 provided, no state-appropriated funds are utilized. The fee for an
20 evaluation and assessment shall be the amount provided in subsection
21 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
22 evaluation and assessment shall be conducted at a certified
23 assessment agency, the office of a certified assessor or at another
24 location as ordered by the court. The agency or assessor shall,

1 within seventy-two (72) hours from the time the person is evaluated
2 and assessed, submit a written report to the court for the purpose
3 of assisting the court in its sentencing determination. The court
4 shall, as a condition of any sentence imposed, including deferred
5 and suspended sentences, require the person to participate in and
6 successfully complete all recommendations from the evaluation, such
7 as an alcohol and substance abuse treatment program pursuant to
8 Section 3-452 of Title 43A of the Oklahoma Statutes. If such report
9 indicates that the evaluation and assessment shows that the
10 defendant would benefit from a ten-hour or twenty-four-hour alcohol
11 and drug substance abuse course or a treatment program or both, the
12 court shall, as a condition of any sentence imposed, including
13 deferred and suspended sentences, require the person to follow all
14 recommendations identified by the evaluation and assessment and
15 ordered by the court. No person, agency or facility operating an
16 evaluation and assessment program certified by the Department of
17 Mental Health and Substance Abuse Services shall solicit or refer
18 any person evaluated and assessed pursuant to this section for any
19 treatment program or substance abuse service in which such person,
20 agency or facility has a vested interest; however, this provision
21 shall not be construed to prohibit the court from ordering
22 participation in or any person from voluntarily utilizing a
23 treatment program or substance abuse service offered by such person,
24 agency or facility. If a person is sentenced to imprisonment in the

1 custody of the Department of Corrections and the court has received
2 a written evaluation report pursuant to the provisions of this
3 subsection, the report shall be furnished to the Department of
4 Corrections with the judgment and sentence. Any evaluation and
5 assessment report submitted to the court pursuant to the provisions
6 of this subsection shall be handled in a manner which will keep such
7 report confidential from the general public's review. Nothing
8 contained in this subsection shall be construed to prohibit the
9 court from ordering judgment and sentence in the event the defendant
10 fails or refuses to comply with an order of the court to obtain the
11 evaluation and assessment required by this subsection. If the
12 defendant fails or refuses to comply with an order of the court to
13 obtain the evaluation and assessment, the Department of Public
14 Safety shall not reinstate driving privileges until the defendant
15 has complied in full with such order. Nothing contained in this
16 subsection shall be construed to prohibit the court from ordering
17 judgment and sentence and any other sanction authorized by law for
18 failure or refusal to comply 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, as defined in subsection H of Section
22 991a of Title 22 of the Oklahoma Statutes, if such a program is
23 offered in the county where the judgment is rendered, and to pay a
24 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty

1 Dollars (\$60.00) as set by the governing authority of the program
2 and approved by the court to the program to offset the cost of
3 participation by the defendant, if in the opinion of the court the
4 defendant has the ability to pay such fee.

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

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

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

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

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; provided, any deferred judgment shall only be
16 considered to constitute a conviction for a period of ten (10) years
17 following the completion of any court-imposed probationary term.

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

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

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

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

9 SECTION 2. AMENDATORY 47 O.S. 2011, Section 11-904, as
10 amended by Section 1, Chapter 157, O.S.L. 2012 (47 O.S. Supp. 2015,
11 Section 11-904), is amended to read as follows:

12 Section 11-904. A. Any person who is involved in a personal
13 injury accident while driving or operating a motor vehicle within
14 this state and who is in violation of the provisions of subsection A
15 of Section 11-902 of this title may be charged with a violation of
16 the provisions of this subsection as follows:

17 1. Any person who is convicted of a violation of the provisions
18 of this subsection shall be deemed guilty of a misdemeanor for the
19 first offense and shall be punished by imprisonment in the county
20 jail for not less than ninety (90) days nor more than one (1) year,
21 and a fine of not more than Two Thousand Five Hundred Dollars
22 (\$2,500.00); and

23 2. Any person who is convicted of a violation of the provisions
24 of this subsection after having been previously convicted of a

1 violation of this subsection or of Section 11-902 of this title
2 shall be deemed guilty of a felony and shall be punished by
3 imprisonment in the custody of the Department of Corrections for not
4 less than one (1) year and not more than five (5) years, and a fine
5 of not more than Five Thousand Dollars (\$5,000.00).

6 B. 1. Any person who causes an accident resulting in great
7 bodily injury to any person other than himself while driving or
8 operating a motor vehicle within this state and who is in violation
9 of the provisions of subsection A of Section 11-902 of this title
10 may be charged with a violation of the provisions of this
11 subsection. Any person who is convicted of a violation of the
12 provisions of this subsection shall be deemed guilty of a felony
13 punishable by imprisonment in the custody of the Department of
14 Corrections for not less than ~~one (1) year~~ four (4) years and not
15 more than ~~ten (10)~~ twenty (20) years, and a fine of not more than
16 Five Thousand Dollars (\$5,000.00).

17 2. As used in this subsection, "great bodily injury" means
18 bodily injury which creates a substantial risk of death or which
19 causes serious, permanent disfigurement or protracted loss or
20 impairment of the function of any bodily member or organ.

21 SECTION 3. This act shall become effective November 1, 2016.
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1 Passed the House of Representatives the 9th day of March, 2016.

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3 _____
4 Presiding Officer of the House
of Representatives

5 Passed the Senate the ____ day of _____, 2016.

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8 _____
9 Presiding Officer of the Senate