

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2555
Page 1 Section 1 Lines 18
Of the printed Bill
Of the Engrossed Bill

By deleting Section 1 in its entirety and inserting in lieu thereof a new Section 1 to read as follows:

[INSERT ATTACHED]

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Harold Wright _____

Reading Clerk

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

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

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

14 2. Is under the influence of alcohol;

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

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

24

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

4 B. The fact that any person charged with a violation of this
5 section is or has been lawfully entitled to use alcohol or a
6 controlled dangerous substance or any other intoxicating substance
7 shall not constitute a defense against any charge of violating this
8 section.

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

- 12 a. participate in an assessment and evaluation pursuant
13 to subsection G of this section and shall follow all
14 recommendations made in the assessment and evaluation,
- 15 b. be punished by imprisonment in jail for not less than
16 ten (10) days nor more than one (1) year, and
- 17 c. be fined not more than One Thousand Dollars
18 (\$1,000.00).

19 2. Any person who, ~~during the period of any court-imposed~~
20 ~~probationary term or within ten (10) years of the date following the~~
21 ~~completion of the execution of any sentence~~ having been convicted of
22 or having received deferred judgment for a violation of this section
23 or a violation pursuant to the provisions of any law of this state
24 or another state prohibiting the offenses provided in ~~subsection A~~

1 ~~of~~ this section, Section 11-904 of this title or paragraph 4 of
2 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes,
3 ~~commits a second offense pursuant to the provisions of this section~~
4 or ~~has~~ having a prior conviction in a municipal criminal court of
5 record for the violation of a municipal ordinance prohibiting the
6 offense provided for in ~~subsection A of this section and within ten~~
7 ~~(10) years of the date following the completion of the execution of~~
8 ~~such sentence or deferred judgment~~ commits a ~~second offense pursuant~~
9 ~~to the provisions~~ subsequent violation of this section within ten
10 (10) years of the date following the completion of the execution of
11 said sentence or deferred judgment, and against whom the district
12 attorney seeks to enhance punishment pursuant to the provision of
13 this section shall, upon conviction, be guilty of a felony and shall
14 participate in an assessment and evaluation pursuant to subsection G
15 of this section and shall be sentenced to:

- 16 a. follow all recommendations made in the assessment and
17 evaluation for treatment at the defendant's expense,
18 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

23
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 treatment in subsection G of this section does
5 not include residential or inpatient treatment for a period of not
6 less than five (5) days, the person shall serve a term of
7 imprisonment of at least five (5) days.

8 3. Any person who ~~is convicted of~~ commits a violation of this
9 section after having been convicted of a second felony offense
10 pursuant to the provisions of this section or a violation pursuant
11 to the provisions of any law of this state or another state
12 prohibiting the offenses provided for in ~~subsection A of this~~
13 section, Section 11-904 of this title or paragraph 4 of subsection A
14 of Section 852.1 of Title 21 of the Oklahoma Statutes, and against
15 whom the district attorney seeks to enhance punishment shall be
16 guilty of a felony and participate in an assessment and evaluation
17 pursuant to subsection G 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 two hundred forty (240) hours of community service and
21 use of an ignition interlock device, as provided by
22 subparagraph n of paragraph 1 of subsection A of
23 Section 991a of Title 22 of the Oklahoma Statutes, or
24

- 1 b. placement in the custody of the Department of
2 Corrections for not less than one (1) year and not to
3 exceed ten (10) years and a fine of not more than Five
4 Thousand Dollars (\$5,000.00), or
- 5 c. treatment, imprisonment and a fine within the
6 limitations prescribed in subparagraphs a and b of
7 this paragraph.

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

12 4. Any person who ~~is~~ commits a violation of this section after
13 having been twice convicted of a ~~third or subsequent~~ felony offense
14 pursuant to the provisions of this section or a violation pursuant
15 to the provisions of any law of this state or another state
16 prohibiting the offenses provided for in ~~subsection A of~~ this
17 section, Section 11-904 of this title or paragraph 4 of subsection A
18 of Section 852.1 of Title 21 of the Oklahoma Statutes, and against
19 whom the district attorney seeks to enhance punishment, shall be
20 guilty of a felony and participate in an assessment and evaluation
21 pursuant to subsection G of this section and shall be sentenced to:
22 a. follow all recommendations made in the assessment and
23 evaluation for treatment at the defendant's expense,
24 followed by not less than one (1) year of supervision

1 and periodic testing at the defendant's expense, four
2 hundred eighty (480) hours of community service, and
3 use of an ignition interlock device, as provided by
4 subparagraph n of paragraph 1 of subsection A of
5 Section 991a of Title 22 of the Oklahoma Statutes, for
6 a minimum of thirty (30) days, or

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

11 c. treatment, imprisonment and a fine within the
12 limitations prescribed in subparagraphs a and b of
13 this paragraph.

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

17 5. Any person who, after a previous conviction of a violation
18 of murder in the second degree or manslaughter in the first degree
19 in which the death was caused as a result of driving under the
20 influence of alcohol or other intoxicating substance, is convicted
21 of a violation of this section shall be guilty of a felony and shall
22 be punished by imprisonment in the custody of the Department of
23 Corrections for not less than five (5) years and not to exceed
24

1 twenty (20) years, and a fine of not more than Ten Thousand Dollars
2 (\$10,000.00).

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

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

14 D. Any person who is convicted of a violation of driving under
15 the influence with a blood or breath alcohol concentration of
16 fifteen-hundredths (0.15) or more pursuant to this section shall be
17 deemed guilty of aggravated driving under the influence. A person
18 convicted of aggravated driving under the influence shall
19 participate in an assessment and evaluation pursuant to subsection G
20 of this section and shall comply with all recommendations for
21 treatment. Such person shall be sentenced as provided in paragraph
22 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

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

23 E. When a person is sentenced to imprisonment in the custody of
24 the Department of Corrections, the person shall be processed through

1 the Lexington Assessment and Reception Center or at a place
2 determined by the Director of the Department of Corrections. The
3 Department of Corrections shall classify and assign the person to
4 one or more of the following:

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

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

10 Successful completion of a Department-of-Corrections-approved
11 substance abuse treatment program shall satisfy the recommendation
12 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
13 course or treatment program or both. Successful completion of an
14 approved Department of Corrections substance abuse treatment program
15 may precede or follow the required assessment.

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

20 G. Any person who is found guilty of a violation of the
21 provisions of this section shall be ordered to participate in an
22 alcohol and drug substance abuse evaluation and assessment program
23 offered by a certified assessment agency or certified assessor for
24 the purpose of evaluating and assessing the receptivity to treatment

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

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

1 Safety shall not reinstate driving privileges until the defendant
2 has complied in full with such order. Nothing contained in this
3 subsection shall be construed to prohibit the court from ordering
4 judgment and sentence and any other sanction authorized by law for
5 failure or refusal to comply with an order of the court.

6 H. Any person who is found guilty of a violation of the
7 provisions of this section may be required by the court to attend a
8 victims impact panel program, as defined in subsection H of Section
9 991a of Title 22 of the Oklahoma Statutes, if such a program is
10 offered in the county where the judgment is rendered, and to pay a
11 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
12 Dollars (\$60.00) as set by the governing authority of the program
13 and approved by the court to the program to offset the cost of
14 participation by the defendant, if in the opinion of the court the
15 defendant has the ability to pay such fee.

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

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

24

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

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

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

19 M. Any plea of guilty, nolo contendere or finding of guilt for
20 a violation of this section or a violation pursuant to the
21 provisions of any law of this state or another state prohibiting the
22 offenses provided for in ~~subsection A~~ of this section, Section 11-
23 904 of this title, or paragraph 4 of subsection A of Section 852.1
24 of Title 21 of the Oklahoma Statutes, shall constitute a conviction

1 of the offense for the purpose of this section ~~for a period of ten~~
2 ~~(10) years following the completion of any court-imposed~~
3 ~~probationary term; provided, any deferred judgment shall only be~~
4 considered to constitute a conviction for a period of ten (10) years
5 following the completion of any court-imposed probationary term.

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

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

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

21

22 55-2-9458 JM 03/07/16

23

24