

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3146

By: Sanders of the House

and

Treat of the Senate

7
8
9
10 COMMITTEE SUBSTITUTE

11 [motor vehicles - Impaired Driving Elimination Act -
12 effective date]

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

17 SECTION 1. NEW LAW A new section of law not to be
18 codified in the Oklahoma Statutes reads as follows:

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

21 SECTION 2. AMENDATORY 47 O.S. 2011, Section 11-902, as
22 last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
23 2014, Section 11-902), is amended to read as follows:

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

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

11 2. Is under the influence of alcohol;

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

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

21 5. Is under the combined influence of alcohol and any other
22 intoxicating substance which may render such person incapable of
23 safely driving or operating a motor vehicle.
24

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

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

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

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

1 municipal criminal court of record for the violation of a municipal
2 ordinance prohibiting the offense provided for in subsection A of
3 this section and within ten (10) years of the date following the
4 completion of the execution of such sentence or deferred judgment
5 commits a second offense pursuant to the provisions of this section
6 shall, upon conviction, be guilty of a felony and shall participate
7 in an assessment and evaluation pursuant to subsection G of this
8 section and shall be sentenced to:

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

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

23 3. Any person who is 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 shall
5 participate in an assessment and evaluation pursuant to subsection G
6 of this section and shall be sentenced to:

- 7 a. follow all recommendations made in the assessment and
8 evaluation for treatment at the defendant's expense,
9 two hundred forty (240) hours of community service and
10 use of an ignition interlock device, as provided by
11 subparagraph n of paragraph 1 of subsection A of
12 Section 991a of Title 22 of the Oklahoma Statutes, or
- 13 b. placement in the custody of the Department of
14 Corrections for not less than one (1) year and not to
15 exceed ten (10) years and a fine of not more than Five
16 Thousand Dollars (\$5,000.00), or
- 17 c. treatment, imprisonment and a fine within the
18 limitations prescribed in subparagraphs a and b of
19 this paragraph.

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

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

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

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

22 c. treatment, imprisonment and a fine within the
23 limitations prescribed in subparagraphs a and b of
24 this paragraph.

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

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

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

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

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

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

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

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

1 in paragraph 2 of subsection C of this section. Any person who
2 commits a second felony offense pursuant to this subsection shall,
3 upon conviction, be guilty of a felony and shall be punished as
4 provided in paragraph 3 of subsection C of this section. Any person
5 who commits a third or subsequent felony offense pursuant to the
6 provisions of this subsection shall, upon conviction, be guilty of a
7 felony and shall be punished as provided in paragraph 4 of
8 subsection C of this section.

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

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

18 2. A correctional facility operated by the Department of
19 Corrections with assignment to substance abuse treatment.
20 Successful completion of a Department-of-Corrections-approved
21 substance abuse treatment program shall satisfy the recommendation
22 for a ten-hour or twenty-four-hour alcohol and drug substance abuse
23 course or treatment program or both. Successful completion of an
24

1 approved Department of Corrections substance abuse treatment program
2 may precede or follow the required assessment.

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

7 G. Any person who is found guilty of a violation of the
8 provisions of this section shall be ordered to participate in an
9 alcohol and drug substance abuse evaluation and assessment program
10 offered by a certified assessment agency or certified assessor for
11 the purpose of evaluating and assessing the receptivity to treatment
12 and prognosis of the person and shall follow all recommendations
13 made in the assessment and evaluation for treatment. The court
14 shall order the person to reimburse the agency or assessor for the
15 evaluation and assessment. Payment shall be remitted by the
16 defendant or on behalf of the defendant by any third party;
17 provided, no state-appropriated funds are utilized. The fee for an
18 evaluation and assessment shall be the amount provided in subsection
19 C of Section 3-460 of Title 43A of the Oklahoma Statutes. The
20 evaluation and assessment shall be conducted at a certified
21 assessment agency, the office of a certified assessor or at another
22 location as ordered by the court. The agency or assessor shall,
23 within seventy-two (72) hours from the time the person is evaluated
24 and assessed, submit a written report to the court for the purpose

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

1 subsection, the report shall be furnished to the Department of
2 Corrections with the judgment and sentence. Any evaluation and
3 assessment report submitted to the court pursuant to the provisions
4 of this subsection shall be handled in a manner which will keep such
5 report confidential from the general public's review. Nothing
6 contained in this subsection shall be construed to prohibit the
7 court from ordering judgment and sentence in the event the defendant
8 fails or refuses to comply with an order of the court to obtain the
9 evaluation and assessment required by this subsection. If the
10 defendant fails or refuses to comply with an order of the court to
11 obtain the evaluation and assessment, the Department of Public
12 Safety shall not reinstate driving privileges until the defendant
13 has complied in full with such order. Nothing contained in this
14 subsection shall be construed to prohibit the court from ordering
15 judgment and sentence and any other sanction authorized by law for
16 failure or refusal to comply with an order of the court.

17 H. Any person who is found guilty of a violation of the
18 provisions of this section may be required by the court to attend a
19 victims impact panel program, as defined in subsection H of Section
20 991a of Title 22 of the Oklahoma Statutes, if such a program is
21 offered in the county where the judgment is rendered, and to pay a
22 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
23 Dollars (\$60.00) as set by the governing authority of the program
24 and approved by the court to the program to offset the cost of

1 participation by the defendant, if in the opinion of the court the
2 defendant has the ability to pay such fee.

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

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

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

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

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

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

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

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

23 2. Whether a person was under the influence of one or more
24 impairing substances and the category of such impairing substance or

1 substances. A witness who has received training and holds a current
2 certification as a drug recognition expert shall be qualified to
3 give the testimony in any case in which such testimony may be
4 relevant.

5 O. All monies received from fines or assessments for violations
6 of the provisions of this section, when collected by the court
7 clerk, shall be deposited by such court clerk as follows:

8 1. Forty-five percent (45%) thereof to the District Attorneys
9 Council Revolving Fund to defray the costs of prosecution;

10 2. Twenty-five percent (25%) thereof to the arresting agency to
11 defray the costs of enforcing laws relating to driving under the
12 influence of alcohol or other intoxicating substance;

13 3. Fifteen percent (15%) thereof to the court fund;

14 4. Ten percent (10%) thereof to the court clerk; and

15 5. Five percent (5%) thereof to the Oklahoma Impaired Driver
16 Database Revolving Fund to defray the costs of the creation,
17 implementation and maintenance of the impaired driver database.

18 P. The court shall not have the discretion to waive any fine or
19 assessment in its entirety that is prescribed as punishment for
20 violating the provisions of this section. However, if the court
21 determines that a reduction of the fine or assessment is warranted,
22 the court shall equally apply the same percentage reduction to the
23 fine or assessment, costs and any other fees assessed in the
24 criminal case.

1 SECTION 3. AMENDATORY 47 O.S. 2011, Section 11-906.4, is
2 amended to read as follows:

3 Section 11-906.4 A. It is unlawful, and punishable as provided
4 in subsection B of this section, for any person under twenty-one
5 (21) years of age to drive, operate, or be in actual physical
6 control of a motor vehicle within this state who:

7 1. Has any measurable quantity of alcohol in the person's blood
8 or breath at the time of a test administered within two (2) hours
9 after an arrest of the person;

10 2. Exhibits evidence of being under the influence of any other
11 intoxicating substance as shown by analysis of a specimen of the
12 person's blood, breath, saliva, or urine in accordance with the
13 provisions of Sections 752 and 759 of this title; or

14 3. Exhibits evidence of the combined influence of alcohol and
15 any other intoxicating substance.

16 B. Any person under twenty-one (21) years of age who violates
17 any provision of this section shall be subject to the seizure of the
18 driver license of that person at the time of arrest or detention and
19 the person, upon conviction, shall be guilty of operating or being
20 in actual physical control of a motor vehicle while under the
21 influence while under age and shall be punished:

22 1. For a first conviction, by:

23 a. a fine of not less than One Hundred Dollars (\$100.00)
24 nor more than Five Hundred Dollars (\$500.00),

- b. assignment to and completion of twenty (20) hours of community service,
- c. requiring the person to attend and complete a treatment program, or
- d. any combination of fine, community service, or treatment;

2. Upon a second conviction, by:

- a. assignment to and completion of not less than two hundred forty (240) hours of community service, and
- b. the requirement, after the conclusion of the mandatory revocation period, to install 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 period of not less than thirty (30) days.

In addition, a second conviction may be punished by a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), or by requiring the person to attend and complete a treatment program, as recommended by the assessment required pursuant to subparagraph c of paragraph 2 of subsection D of this section, or by both; or

3. Upon a third or subsequent conviction, by:

- a. assignment to and completion of not less than four hundred eighty (480) hours of community service, and

1 b. the requirement, after the conclusion of the mandatory
2 revocation period, to install an ignition interlock
3 device or devices, as provided by subparagraph n of
4 paragraph 1 of subsection A of Section 991a of Title
5 22 of the Oklahoma Statutes, for a period of not less
6 than thirty (30) days.

7 In addition, a third or subsequent conviction may be punished by a
8 fine of not less than One Hundred Dollars (\$100.00) nor more than
9 Two Thousand Dollars (\$2,000.00), or by requiring the person to
10 attend and complete a treatment program, as recommended by the
11 assessment required pursuant to subparagraph c of paragraph 2 of
12 subsection D of this section, or by both.

13 C. The court may assess additional community service hours in
14 lieu of any fine specified in this section.

15 D. In addition to any penalty or condition imposed pursuant to
16 the provisions of this section, the person shall be subject to:

17 1. Upon a first conviction:

18 a. the cancellation or denial of driving privileges as
19 ordered by the court pursuant to subsection B of
20 Section 6-107.1 of this title,

21 b. the mandatory revocation of driving privileges
22 pursuant to Section 6-205.1, 753 or 754 of this title,
23 which revocation period may be modified as provided by
24 law, and

1 c. the continued installation of an ignition interlock
2 device or devices, at the expense of the person, as
3 provided in subsection D of Section 6-212.3 of this
4 title, after the mandatory period of cancellation,
5 denial or revocation for a period as provided in
6 paragraph 1 of subsection A of Section 6-212.3 of this
7 title;

8 2. Upon a second conviction:

9 a. the cancellation or denial of driving privileges, as
10 ordered by the court pursuant to subsection B of
11 Section 6-107.2 of this title,

12 b. the mandatory revocation of driving privileges
13 pursuant to Section 6-205.1, 753 or 754 of this title,
14 which period may be modified as provided by law,

15 c. an assessment of the person's degree of alcohol abuse,
16 in the same manner as prescribed in subsection H of
17 Section 11-902 of this title, which may result in
18 treatment as deemed appropriate by the court, and

19 d. the continued installation of an ignition interlock
20 device or devices, at the expense of the person, as
21 provided in subsection D of Section 6-212.3 of this
22 title, after the mandatory period of cancellation,
23 denial or revocation for a period as provided in
24

1 paragraph 2 of subsection A of Section 6-212.3 of this
2 title; and

3 3. Upon a third or subsequent conviction:

4 a. the cancellation or denial of driving privileges as
5 ordered by the court pursuant to subsection B of
6 Section 6-107.2 of this title,

7 b. the mandatory revocation of driving privileges
8 pursuant to Section 6-205.1, 753 or 754 of this title,
9 which period may be modified as provided by law,

10 c. an assessment of the person's degree of alcohol abuse,
11 in the same manner as prescribed in subsection H of
12 Section 11-902 of this title, which may result in
13 treatment as deemed appropriate by the court, and

14 d. the continued installation of an ignition interlock
15 device or devices, at the expense of the person, as
16 provided in subsection D of Section 6-212.3 of this
17 title, after the mandatory period of cancellation,
18 denial, or revocation for a period as provided in
19 paragraph 3 of subsection A of Section 6-212.3 of this
20 title.

21 E. Nothing in this section shall be construed to prohibit the
22 filing of charges pursuant to Section 761 or 11-902 of this title
23 when the facts warrant.

24 F. As used in this section:

1 1. The term "conviction" includes a juvenile delinquency
2 adjudication by a court; and

3 2. The term "revocation" includes the cancellation or denial of
4 driving privileges by the Department.

5 G. All monies received from fines or assessments for violations
6 of the provisions of this section, when collected by the court
7 clerk, shall be deposited by such court clerk as follows:

8 1. Forty-five percent (45%) thereof to the District Attorneys
9 Council Revolving Fund to defray the costs of prosecution;

10 2. Twenty-five percent (25%) thereof to the arresting agency to
11 defray the costs of enforcing laws relating to driving under the
12 influence of alcohol or other intoxicating substance;

13 3. Fifteen percent (15%) thereof to the court fund;

14 4. Ten percent (10%) thereof to the court clerk; and

15 5. Five percent (5%) thereof to the Oklahoma Impaired Driver
16 Database Revolving Fund to defray the costs of the creation,
17 implementation and maintenance of the impaired driver database.

18 H. The court shall not have the discretion to waive any fine or
19 assessment in its entirety that is prescribed as punishment for
20 violating the provisions of this section. However, if the court
21 determines that a reduction of the fine or assessment is warranted,
22 the court shall equally apply the same percentage reduction to the
23 fine or assessment, costs and any other fees assessed in the
24 criminal case.

SECTION 4. AMENDATORY 47 O.S. 2011, Section 761, is amended to read as follows:

Section 761. A. Any person who operates a motor vehicle while his ability to operate such motor vehicle is impaired by the consumption of alcohol, or any other substance, other than alcohol, which is capable of being ingested, inhaled, injected or absorbed into the human body and is capable of adversely affecting the central nervous system, vision, hearing or other sensory or motor functions shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00), or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

B. Upon the receipt of any person's record of conviction of driving while impaired, when such conviction has become final, the Department of Public Safety shall suspend the driving privilege of such person, as follows:

1. The first suspension shall be for thirty (30) days;

2. The second suspension shall be for a period of six (6) months, which may be modified; provided, any modification under this paragraph shall apply to Class D motor vehicles only; and

3. The third or subsequent suspension shall be for twelve (12) months, which may be modified; provided, any modification under this paragraph shall apply to Class D motor vehicles only.

1 Provided, however, the Department shall not suspend such
2 privilege pursuant to this subsection if said person's driving
3 privilege has been revoked based upon a test result or test refusal
4 pursuant to Section 753 or Section 754 of this title arising from
5 the same circumstances which resulted in the conviction.

6 C. The violations as set out in this section shall not be
7 bondable under Section 1115.3 of Title 22 of the Oklahoma Statutes.

8 D. Any person who is found guilty of a violation of the
9 provisions of this section or pleading guilty or nolo contendere for
10 a violation of any provision of this section shall be ordered to
11 participate in, prior to sentencing, an alcohol and drug assessment
12 and evaluation by an assessment agency or assessment personnel
13 certified by the Department of Mental Health and Substance Abuse
14 Services for the purpose of evaluating the receptivity to treatment
15 and prognosis of the person. The court shall order the person to
16 reimburse the agency or assessor for the assessment and evaluation.
17 The fee for an assessment and evaluation shall be the amount
18 provided in subsection C of Section 3-460 of Title 43A of the
19 Oklahoma Statutes. The evaluation shall be conducted at a certified
20 assessment agency, the office of a certified assessor or at another
21 location as ordered by the court. The agency or assessor shall,
22 within seventy-two (72) hours from the time the person is assessed,
23 submit a written report to the court for the purpose of assisting
24 the court in its final sentencing determination. If such report

1 indicates that the evaluation shows that the defendant would benefit
2 from a ten-hour or twenty-four-hour alcohol and drug substance abuse
3 course or a treatment program or both, the court shall, as a
4 condition of any sentence imposed, including a deferred sentence and
5 a suspended sentence, require the person to follow all
6 recommendations identified by the assessment and evaluation and
7 ordered by the court. No person, agency or facility operating an
8 alcohol and drug substance abuse evaluation program certified by the
9 Department of Mental Health and Substance Abuse Services shall
10 solicit or refer any person evaluated pursuant to this section for
11 any treatment program or alcohol and drug substance abuse service in
12 which such person, agency or facility has a vested interest;
13 however, this provision shall not be construed to prohibit the court
14 from ordering participation in or any person from voluntarily
15 utilizing a treatment program or alcohol and drug substance abuse
16 service offered by such person, agency or facility. Any evaluation
17 report submitted to the court pursuant to this subsection shall be
18 handled in a manner which will keep such report confidential from
19 the general public's review. Nothing contained in this subsection
20 shall be construed to prohibit the court from ordering judgment and
21 sentence and any other sanction authorized by law for failure or
22 refusal to comply with an order of the court.

1 E. All monies received from fines or assessments for violations
2 of the provisions of this section, when collected by the court
3 clerk, shall be deposited by such court clerk as follows:

4 1. Forty-five percent (45%) thereof to the District Attorneys
5 Council Revolving Fund to defray the costs of prosecution;

6 2. Twenty-five percent (25%) thereof to the arresting agency to
7 defray the costs of enforcing laws relating to driving under the
8 influence of alcohol or other intoxicating substance;

9 3. Fifteen percent (15%) thereof to the court fund;

10 4. Ten percent (10%) thereof to the court clerk; and

11 5. Five percent (5%) thereof to the Oklahoma Impaired Driver
12 Database Revolving Fund to defray the costs of the creation,
13 implementation and maintenance of the impaired driver database.

14 F. The court shall not have the discretion to waive any fine or
15 assessment in its entirety that is prescribed as punishment for
16 violating the provisions of this section. However, if the court
17 determines that a reduction of the fine or assessment is warranted,
18 the court shall equally apply the same percentage reduction to the
19 fine or assessment, costs and any other fees assessed in the
20 criminal case.

21 SECTION 5. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 11-902c of Title 47, unless
23 there is created a duplication in numbering, reads as follows:
24

1 A. The State Legislature hereby occupies and preempts the
2 entire field of legislation in this state touching in any way the
3 prosecution of offenses relating to driving under the influence of
4 alcohol or any other intoxicating substance or operating a motor
5 vehicle while impaired to the complete exclusion of any order,
6 ordinance, local legislation or regulation by any municipality or
7 other political subdivision of this state.

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

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

21 SECTION 6. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 11-902d of Title 47, unless
23 there is created a duplication in numbering, reads as follows:
24

1 A. The Commissioner of the Department of Public Safety is
2 hereby authorized to oversee the creation, development and
3 implementation of a statewide impaired driver database with
4 assistance from the Office of Management and Enterprise Services
5 subject to fiscal limitations and the availability of federal funds.

6 B. The Commissioner shall prescribe the form of the
7 investigative report required for offenses relating to driving under
8 the influence of alcohol or any other intoxicating substance or
9 operating a motor vehicle while impaired.

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

21 SECTION 7. This act shall become effective November 1, 2016.

22
23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS AND BUDGET, dated
24 02/25/2016 - DO PASS, As Amended and Coauthored.