

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 3146

By: Sanders

AS INTRODUCED

An Act relating to driving while impaired; creating the Impaired Driving Elimination Act (IDEA); providing short title; authorizing municipalities to create a limited municipal criminal court of record; stating purpose; requiring municipal resolution; requiring filing of resolution with county clerk; stating jurisdiction of court; stating penalties; providing for the remittance of fines and fees; providing for jury trials; authorizing administrative fees for deferred sentences; restricting prosecution in certain courts; providing for appointment and compensation of judges; stating qualifications; providing for powers and duties; authorizing appointment of special judges under certain circumstances; providing for court reporter; providing for selection of jurors and conduct of jury trials; requiring courts to comply with certain criminal code of procedure; stating powers of judges and court clerks; providing sentencing procedures; providing for the expungement of records; authorizing deferred sentencing for certain period; providing for appeals to the Court of Criminal Appeals; requiring courts to be governed by certain laws governing municipal courts not of record; amending 11 O.S. 2011, Section 28-123, which relates to penalties; modifying certain probation period; stating exception; amending 11 O.S. 2011, Section 14-111, which relates to penalties for violations of municipal ordinances; updating statutory language; modifying costs, fines and penalties for certain violations; amending 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) which relates to punishments for impaired driving; modifying certain fine; requiring certain first and subsequent offenses

1 to be filed in certain courts; providing for
2 codification; providing for noncodification; and
3 providing an effective date.
4

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

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

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

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 27-140 of Title 11, unless there
12 is created a duplication in numbering, reads as follows:

13 A municipality having a municipal court not of record may create
14 a limited municipal criminal court of record to establish municipal
15 jurisdiction over violations of ordinances prohibiting driving,
16 operating or being in the actual physical control of a motor vehicle
17 while under the influence of alcohol or other intoxicating
18 substances, as provided for in Section 11-902 of Title 47 of the
19 Oklahoma Statutes. To create a limited municipal criminal court of
20 record, effective on or after January 1, 2017, the governing body of
21 a municipality shall determine by resolution that the efficient
22 disposition of cases involving violations of its ordinances
23 prohibiting driving, operating or being in the actual physical
24 control of a motor vehicle while under the influence of alcohol or

1 other intoxicating substances necessitate the creation of a limited
2 municipal criminal court of record. The governing body shall cause
3 a certified copy of the resolution to be filed in the office of the
4 county clerk of the county in which the municipality is located.
5 The filing of the resolution shall thereafter be judicially noticed
6 in all courts of this state.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 27-141 of Title 11, unless there
9 is created a duplication in numbering, reads as follows:

10 A. Limited municipal criminal courts of record shall have
11 original jurisdiction, as provided by Section 1 of Article VII of
12 the Oklahoma Constitution, to hear and determine all prosecutions
13 for a violation of any ordinance prohibiting driving, operating or
14 being in the actual physical control of a motor vehicle while under
15 the influence of alcohol or other intoxicating substances.

16 B. When an offense of driving, operating or being in the actual
17 physical control of a motor vehicle while under the influence of
18 alcohol or other intoxicating substances is charged, the penalty
19 provided for the violation of the ordinance shall be a fine or
20 deferral fees in lieu of a fine not exceeding One Thousand Two
21 Hundred Fifty Dollars (\$1,250.00), imprisonment not to exceed six
22 (6) months, or both fine and imprisonment, plus costs, fees and
23 assessments. The court shall remit a portion of any fine or
24 deferral fee in accordance with the requirements of paragraph 1 of

1 subsection B of Section 14-111 of Title 11 of the Oklahoma Statutes.
2 All persons so charged before a limited municipal criminal court of
3 record shall be entitled to a trial by jury, unless waived by the
4 defendant. Judgments and sentences imposed by the judge shall be as
5 effective as if the same had been rendered and imposed by a jury.

6 C. If a deferred sentence is imposed, an administrative fee not
7 to exceed the amount prescribed in subsection D of Section 28-123 of
8 Title 11 of the Oklahoma Statutes may be imposed as costs in the
9 case.

10 D. A defendant who has been in jeopardy for the same or any
11 lesser included offense in the limited municipal criminal court of
12 record or district court shall not be prosecuted in any other court
13 for the same or a lesser included offense.

14 SECTION 4. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 27-142 of Title 11, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The municipal governing body may appoint and fix the
18 compensation of one or more judges of the limited municipal criminal
19 court of record, as may be required. Judges may be the same as
20 those appointed as a judge of the municipality's municipal court not
21 of record. Each judge shall possess the qualifications required by
22 law to be possessed by associate judges of the district court. A
23 judge shall serve for a term of two (2) years, expiring on a date
24 fixed by ordinance, and until a successor is appointed and

1 qualified, unless sooner removed by the vote of a majority of all
2 members of the governing body for such cause as is provided by law
3 for the removal of public officers. Any appointment to fill a
4 vacancy shall be for the unexpired term.

5 B. A judge of a limited municipal criminal court of record
6 shall have power to administer oaths, keep and preserve the records
7 of the court, certify transcripts and other records and shall have
8 and possess such other general powers as are possessed by the
9 district judge. The judge shall also approve all recognizances and
10 bonds to which persons charged, or convicted, may be admitted and
11 shall determine and fix the amount thereof.

12 C. In the event of the disqualification, disability or absence
13 of a regular judge of a limited municipal criminal court of record,
14 the municipal governing body shall have power to appoint a special
15 judge to sit for the duration of such disqualification, disability
16 or absence.

17 SECTION 5. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 27-143 of Title 11, unless there
19 is created a duplication in numbering, reads as follows:

20 A. The presiding judge of a limited municipal criminal court of
21 record may recommend to the governing body of the municipality the
22 appointment of a suitable and proper person as court reporter, whose
23 duty it shall be to correctly take and record all of the testimony
24 and proceedings pertaining to offenses of driving, operating or

1 being in the actual physical control of a motor vehicle while under
2 the influence of alcohol or other intoxicating substances when
3 required by either party. The municipal governing body shall fix
4 the compensation to be allowed the court reporter. Such court
5 reporter may also perform such other clerical duties as the
6 municipal governing body and judge and clerk of the court may
7 require and shall have power to certify all transcripts and records
8 of evidence and proceedings taken.

9 B. Any such court reporter, before entering upon the duties of
10 office, shall be duly sworn in open court to faithfully perform the
11 duties of that office.

12 C. The court reporter shall not receive any fees from the
13 municipality other than the compensation provided for the regular
14 employment of the court reporter but shall receive the same fees for
15 transcribing the testimony and proceedings from other parties that
16 are received by reporters of the district court for like services.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 27-144 of Title 11, unless there
19 is created a duplication in numbering, reads as follows:

20 A. A jury for the trial of cases in a limited municipal
21 criminal court of record shall consist of six (6) persons who shall
22 be selected, empaneled and qualified in the same manner that jurors
23 are selected, empaneled and qualified in the district court.
24

1 B. Jurors in a limited municipal criminal court of record shall
2 be selected pursuant to this section under the same terms and
3 conditions as are provided for by law for the district courts, or in
4 the alternative, pursuant to Section 18.1 of Title 38 of the
5 Oklahoma Statutes. Upon written request of the judge of a limited
6 municipal criminal court record for a stated number of jurors to the
7 chief judge of the appropriate district court, it shall be the duty
8 of the clerk of the district court to draw from the jury wheel a
9 requested number of jurors in the same manner as is provided by law
10 for the district court until the number requested, who from their
11 addresses appear to reside within the corporate limits of the
12 municipality, is drawn and to prepare a list of names drawn and
13 certify such list to the judge of the municipal court. On
14 completion of the draw, the clerk shall immediately return to the
15 jury wheel all names drawn which are not placed on the certified
16 list. The judge of the limited municipal criminal court of record
17 shall make written request to the chief judge of the district court
18 for a stated number of additional jurors if, after allowance of
19 claimed statutory exemptions, the listed number is found to be
20 insufficient. Summons of the prospective jurors shall be issued as
21 set out by ordinance and may be served in person by the chief of
22 police or any member of the police force of the municipality or may
23 be served by the clerk of the municipal court by mail.
24

1 C. The judge of the court shall ascertain if any of the
2 prospective jurors reside outside the corporate limits of the
3 municipality and shall not summon for jury duty any nonresident of
4 the municipality.

5 D. Upon order of the presiding judge, the clerk or a judge and
6 the chief of police of the municipality shall draw the names of
7 jurors from the jury box, in such number as may be ordered by the
8 presiding judge, in the same manner as is provided by law for the
9 drawing of names to fill a jury panel in the district court by the
10 district judge and sheriff of the county.

11 SECTION 7. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 27-145 of Title 11, unless there
13 is created a duplication in numbering, reads as follows:

14 A. Except as otherwise specifically provided, a limited
15 municipal criminal court of record shall comply with the criminal
16 code of procedure, as in the district court for misdemeanor cases.

17 B. A limited municipal criminal court of record, by and through
18 its clerk or judge, shall have power to issue subpoenas, writs of
19 attachment and summonses, to administer oaths, to verify complaints
20 and other processes and writs issuable by the district judge in
21 criminal proceedings and to direct the same to the chief of police
22 or other law enforcement officers. The municipal criminal court of
23 record shall have power to compel obedience to its writs and orders
24 in the same manner and to the same extent as the district court. A

1 limited municipal criminal court of record shall also have power to
2 issue arrest warrants and search and seizure warrants. A law
3 enforcement officer of the municipality or a county sheriff may
4 serve an arrest warrant issued by the municipal court any place
5 within this state. If the warrant is served by a county sheriff,
6 the municipality shall pay the Sheriff's Service Fee Account a fee
7 of Twenty Dollars (\$20.00).

8 C. All sentences of imprisonment shall be executed by the chief
9 of police of the municipality, and any person convicted of a
10 violation of any ordinance of the municipality prohibiting driving,
11 operating or being in the actual physical control of a motor vehicle
12 while under the influence of alcohol or other intoxicating
13 substances and sentenced to imprisonment shall be confined in the
14 jail of the municipality, at the discretion of the court, for the
15 time specified in the sentence.

16 D. A judge of a limited municipal criminal court of record
17 imposing a judgment and sentence, at the discretion of the court, is
18 empowered to modify, reduce, or suspend or defer the imposition of
19 such sentence or any part thereof and to authorize probation for a
20 period not to exceed one (1) year from the date of acceptance of a
21 plea, under such terms or conditions as the judge may specify. Upon
22 completion of the probation term following a deferred sentence, the
23 defendant shall be discharged without a court judgment of guilt, and
24 the verdict, judgment of guilty or plea of guilty shall be expunged

1 from the record and the charge be dismissed with prejudice to any
2 further action, except as provided for the commission of a second or
3 subsequent offense pursuant to Section 11-902 of Title 47 of the
4 Oklahoma Statutes. Records of any such deferral and expungement
5 shall be maintained by the court as prescribed in subsection C of
6 Section 991c of Title 22 of the Oklahoma Statutes. Upon a finding
7 of the court that the conditions of probation have been violated,
8 the municipal judge may enter a judgment of guilty.

9 E. A judge of a limited municipal criminal court of record may
10 defer sentencing for a period of time not to exceed one (1) year
11 from the date of sentence.

12 F. The entry of pleas of guilty or nolo contendere to a judge
13 of a limited municipal criminal court of record shall not require
14 that a record be made before a court reporter, provided that they
15 are recorded in a form which is in substantial compliance with any
16 mandatory form for pleas and summary of facts required to be entered
17 in the district courts, as prescribed by the Oklahoma Court of
18 Criminal Appeals.

19 G. Appeals may be taken from a judgment or order of a limited
20 municipal criminal court of record to the Court of Criminal Appeals
21 in the same manner and to the same extent that appeals are now taken
22 from the district courts to the Court of Criminal Appeals in
23 criminal matters, and no appeals other than those herein provided
24 shall be allowed.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 27-146 of Title 11, unless there
3 is created a duplication in numbering, reads as follows:

4 Except as otherwise provided by law, limited municipal criminal
5 courts of record shall be governed by those laws governing municipal
6 criminal courts not of record.

7 SECTION 9. AMENDATORY 11 O.S. 2011, Section 28-123, is
8 amended to read as follows:

9 Section 28-123. A. All sentences of imprisonment shall be
10 executed by the chief of police of the city, and any person
11 convicted of a violation of any ordinance of the city and sentenced
12 to imprisonment shall be confined in the jail, farm or workhouse, of
13 the city, in the discretion of the court, for the time specified in
14 the sentence. All persons who shall be convicted in the court of
15 violation of any ordinance of the city and sentenced to pay a fine
16 and costs, who shall refuse to pay such fine or costs, shall be
17 imprisoned in the jail of the city for one (1) day for each Two
18 Dollars (\$2.00) of the fine and costs assessed.

19 B. The judge of the municipal criminal court of record imposing
20 a judgment and sentence, at ~~his~~ the discretion of the judge, is
21 empowered to modify, reduce, or suspend or defer the imposition of
22 such sentence or any part thereof and to authorize probation for a
23 period not to exceed ~~six (6) months~~ one (1) year from the date of
24 ~~sentence~~ acceptance of the plea, under such terms or conditions as

1 the judge may specify. Upon completion of the probation term
2 following a deferred sentence, the defendant shall be discharged
3 without a court judgment of guilt, and the verdict, judgment of
4 guilty or plea of guilty shall be expunged from the record and ~~said~~
5 the charge be dismissed with prejudice to any further action. Upon
6 a finding of the court that the conditions of probation have been
7 violated, the municipal judge may enter a judgment of guilty.

8 C. The judge of the municipal court of record may continue or
9 delay imposing a judgment and sentence for a period of time not to
10 exceed one (1) year from the date of sentence. ~~At~~ Except when the
11 offense constitutes a violation of an ordinance prohibiting driving,
12 operating or being in the actual physical control of a motor vehicle
13 while under the influence of alcohol or other intoxicating
14 substances, at the expiration of such period of time the judge may
15 allow the city attorney to amend the charge to a lesser offense.

16 D. If a deferred sentence is imposed, an administrative fee of
17 One Hundred Dollars (\$100.00) may be imposed as costs in the case,
18 in addition to any deferral fee otherwise authorized by law.

19 SECTION 10. AMENDATORY 11 O.S. 2011, Section 14-111, is
20 amended to read as follows:

21 Section 14-111. A. The governing body of a municipality may
22 provide for enforcement of its ordinances and establish fines,
23 penalties, or imprisonment, as authorized by subsections B through D
24 of this section, for any offense in violation of its ordinances,

1 which shall be recoverable together with costs of suit. The
2 governing body may provide that any person fined for violation of a
3 municipal ordinance who is financially able but refuses or neglects
4 to pay the fine or costs may be compelled to satisfy the amount owed
5 by working on the streets, alleys, avenues, areas, and public
6 grounds of the municipality, subject to the direction of the ~~street~~
7 ~~commissioner or other proper officer~~ officers or employees of the
8 municipality, at a rate per day as the governing body may prescribe
9 by ordinance, but not less than Fifty Dollars (\$50.00) per day for
10 useful labor, until the fine or costs are satisfied.

11 B. 1. Except for municipal ordinances related to prostitution
12 and as otherwise provided in this section, ~~cities~~ municipalities
13 having a municipal criminal court of record may enact ordinances
14 prescribing maximum fines or deferral fees in lieu of fines of One
15 Thousand Two Hundred Dollars (\$1,200.00) ~~and costs~~ or imprisonment
16 not exceeding six (6) months or both ~~the~~ fine and imprisonment, plus
17 costs, fees and assessments, but shall not have authority to enact
18 any ordinance making unlawful an act or omission declared by state
19 statute to be punishable as a felony. ~~Cities~~ Municipalities having
20 a municipal criminal court of record may enact ordinances
21 prescribing maximum fines or deferral fees in lieu of fines of One
22 Thousand Dollars (\$1,000.00) ~~and costs~~ or imprisonment not exceeding
23 six (6) months or both ~~such~~ fine and imprisonment, plus costs, fees
24 and assessments for violations of municipal ordinances regulating

1 the pretreatment of wastewater and regulating stormwater discharges.
2 ~~Cities~~ Municipalities having a municipal criminal court of record or
3 a limited municipal criminal court of record may enact ordinances
4 prescribing maximum fines or deferral fees in lieu of fines of One
5 Thousand Two Hundred Fifty Dollars (\$1,250.00) ~~and costs~~ or
6 imprisonment not exceeding six (6) months or both ~~such~~ fine and
7 imprisonment, plus costs, fees and assessments for ~~alcohol-related~~
8 ~~or drug-related traffic~~ offenses of driving, operating or being in
9 the actual physical control of a motor vehicle while under the
10 influence of alcohol or other intoxicating substances, as provided
11 for in Section 11-902 of Title 47 of the Oklahoma Statutes. The
12 court shall remit Fifty Dollars (\$50.00) of each alcohol fine or
13 deferral fee to a fund of the municipality that shall be used to
14 defray costs for enforcement of laws relating to juvenile access to
15 alcohol, other laws relating to alcohol and other intoxicating
16 substances, and traffic-related offenses involving alcohol or other
17 intoxicating substances.

18 2. For violations of municipal ordinances relating to
19 prostitution, including but not limited to engaging in prostitution
20 or soliciting or procuring prostitution, a municipal criminal court
21 of record may enact ordinances prescribing an imprisonment not to
22 exceed six (6) months, and fines or deferral fees in lieu of fines
23 as follows: a fine not to exceed Two Thousand Five Hundred Dollars
24 (\$2,500.00), plus costs, fees and assessments upon the first

conviction for violation of any such ordinances, a fine or deferral fee in lieu of a fine of not more than Five Thousand Dollars (\$5,000.00), plus costs, fees and assessments upon the second conviction for violation of any of such ordinances, and a fine or deferral fee in lieu of a fine of not more than Seven Thousand Five Hundred Dollars (\$7,500.00), plus costs, fees and assessments 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~~ plus costs, fees and assessments, 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), plus costs fees and assessments. 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), plus costs, fees and assessments. For all other offenses, the maximum fine or deferral fee in lieu of a fine shall not exceed Seven Hundred Fifty Dollars (\$750.00), plus costs, fees and assessments. The court shall remit

1 Fifty Dollars (\$50.00) of each alcohol fine or deferral fee to a
2 fund of the municipality that shall be used to defray costs for
3 enforcement of laws relating to juvenile access to alcohol, other
4 laws relating to alcohol and other intoxicating substances, and
5 traffic-related offenses involving alcohol or other intoxicating
6 substances. The ordinances may prescribe costs pursuant to the
7 provisions of Section 27-126 of this title or imprisonment not
8 exceeding sixty (60) days or both ~~the~~ fine and imprisonment;
9 provided, that municipalities having only a municipal court not of
10 record shall not have authority to enact or enforce any ordinance
11 making unlawful any act or omission declared by state statute to be
12 punishable as a felony, or prohibiting driving, operating or being
13 in the actual physical control of a motor vehicle while under the
14 influence of alcohol or other intoxicating substances, when such
15 offense was committed on or after January 1, 2017; provided further,
16 that municipalities having a municipal court not of record may enact
17 ordinances prescribing maximum fines of One Thousand Dollars
18 (\$1,000.00) ~~and costs~~ or imprisonment not exceeding ninety (90) days
19 or both ~~such~~ fine and imprisonment, plus costs, fees and assessments
20 for violations of municipal ordinances regulating the pretreatment
21 of wastewater and regulating stormwater discharges. If imprisonment
22 is available for the offense, then that person charged shall have a
23 right to a jury trial.
24

1 D. Municipalities having ~~both~~ a municipal criminal ~~courts~~ court
2 of record ~~and~~, a limited municipal criminal court of record or a
3 municipal ~~courts~~ court not of record may enact ordinances, within
4 the authority of this section, for each court.

5 E. No municipality may levy a fine or deferral fee in lieu of a
6 fine of over Fifty Dollars (\$50.00) until it has compiled and
7 published its penal ordinances as required in Sections 14-109 and
8 14-110 of this title.

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

17 SECTION 11. AMENDATORY 47 O.S. 2011, Section 11-902, as
18 last amended by Section 3, Chapter 393, O.S.L. 2013 (47 O.S. Supp.
19 2015, Section 11-902), is amended to read as follows:

20 Section 11-902. A. It is unlawful and punishable as provided
21 in this section for any person to drive, operate, or be in actual
22 physical control of a motor vehicle within this state, whether upon
23 public roads, highways, streets, turnpikes, other public places or
24

1 upon any private road, street, alley or lane which provides access
2 to one or more single or multi-family dwellings, who:

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

7 2. Is under the influence of alcohol;

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

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

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

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

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)~~ One Thousand Two Hundred Fifty Dollars
11 (\$1,250.00).

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

1 the execution of such sentence or deferred judgment commits a second
2 offense pursuant to the provisions of this section shall, upon
3 conviction, be guilty of a felony and shall participate in an
4 assessment and evaluation pursuant to subsection G of this section
5 and shall be sentenced to:

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

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

20 3. Any person who is convicted of a second felony offense
21 pursuant to the provisions of this section or a violation pursuant
22 to the provisions of any law of this state or another state
23 prohibiting the offenses provided for in subsection A of this
24 section, Section 11-904 of this title or paragraph 4 of subsection A

1 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
2 participate in an assessment and evaluation pursuant to subsection G
3 of this section and shall be sentenced to:

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

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

21 4. Any person who is convicted of a third or subsequent felony
22 offense pursuant to the provisions of this section or a violation
23 pursuant to the provisions of any law of this state or another state
24 prohibiting the offenses provided for in subsection A of this

1 section, Section 11-904 of this title or paragraph 4 of subsection A
2 of Section 852.1 of Title 21 of the Oklahoma Statutes shall
3 participate in an assessment and evaluation pursuant to subsection G
4 of this section and shall be sentenced to:

- 5 a. follow all recommendations made in the assessment and
6 evaluation for treatment at the defendant's expense,
7 followed by not less than one (1) year of supervision
8 and periodic testing at the defendant's expense, four
9 hundred eighty (480) 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, for
13 a minimum of thirty (30) days, 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 twenty (20) years and a fine of not more than
17 Five 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 person does not undergo residential or inpatient
22 treatment pursuant to subsection G of this section the person shall
23 serve a term of imprisonment of at least ten (10) days.
24

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

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

14 7. In any case in which a defendant is charged with a second or
15 subsequent driving under the influence of alcohol or other
16 intoxicating substance offense committed prior to January 1, 2017,
17 within any municipality with a municipal court other than a court of
18 record, the charge shall be presented to the county's district
19 attorney and filed with the district court of the county within
20 which the municipality is located. On and after January 1, 2017,
21 charges for any first offense of driving under the influence of
22 alcohol or other intoxicating substance committed on or after
23 January 1, 2017, shall only be filed in a municipal criminal court
24 of record, a limited municipal criminal court of record or the

1 district court, and charges for a second or subsequent offense shall
2 only be filed in the district court.

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 to:

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

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

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

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

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

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

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

1 course or treatment program or both. Successful completion of an
2 approved Department of Corrections substance abuse treatment program
3 may precede or follow the required assessment.

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

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

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

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

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

1 and approved by the court to the program to offset the cost of
2 participation by the defendant, if in the opinion of the court the
3 defendant has the ability to pay such fee.

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

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

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

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

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.

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

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

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

7 SECTION 12. This act shall become effective November 1, 2016.

8
9 55-2-7746 GRS 12/03/15