

1 ENGROSSED SENATE
2 BILL NO. 1091

By: Treat of the Senate

3 and

4 Roberts (Dustin) of the
5 House

6 An Act relating to driving under the influence;
7 amending 47 O.S. 2011, Section 11-902, as last
8 amended by Section 18, Chapter 42, O.S.L. 2017 (47
9 O.S. Supp. 2017, Section 11-902), which relates to
persons under the influence and penalty enhancement;
modifying certain discretion; and providing an
effective date.

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

13 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as
14 last amended by Section 18, Chapter 42, O.S.L. 2017 (47 O.S. Supp.
15 2017, Section 11-902), is amended to read as follows:

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

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

3 2. Is under the influence of alcohol;

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

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

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

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

21 C. 1. Any person who is convicted of a violation of the
22 provisions of this section shall be guilty of a misdemeanor for the
23 first offense and shall:
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- 1 a. participate in an assessment and evaluation pursuant
2 to subsection G of this section and shall follow all
3 recommendations made in the assessment and evaluation,
4 b. be punished by imprisonment in jail for not less than
5 ten (10) days nor more than one (1) year, and
6 c. be fined not more than One Thousand Dollars
7 (\$1,000.00).

8 2. Any person who, having been convicted of or having received
9 deferred judgment for a violation of this section or a violation
10 pursuant to the provisions of any law of this state or another state
11 prohibiting the offenses provided in this section, Section 11-904 of
12 this title or paragraph 4 of subsection A of Section 852.1 of Title
13 21 of the Oklahoma Statutes, or having a prior conviction in a
14 municipal criminal court of record for the violation of a municipal
15 ordinance prohibiting the offense provided for in this section
16 commits a subsequent violation of this section within ten (10) years
17 of the date following the completion of the execution of said
18 sentence or deferred judgment, ~~and against whom the district~~
19 ~~attorney seeks to enhance punishment pursuant to the provision of~~
20 ~~this section,~~ shall, upon conviction, be guilty of a felony and
21 shall participate in an assessment and evaluation pursuant to
22 subsection G of this section and shall be sentenced to:

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

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

15 3. Any person who commits a violation of this section after
16 having been convicted of a felony offense pursuant to the provisions
17 of this section or a violation pursuant to the provisions of any law
18 of this state or another state prohibiting the offenses provided for
19 in this section, Section 11-904 of this title or paragraph 4 of
20 subsection A of Section 852.1 of Title 21 of the Oklahoma Statutes,
21 ~~and against whom the district attorney seeks to enhance punishment,~~
22 shall be guilty of a felony and participate in an assessment and
23 evaluation pursuant to subsection G of this section and shall be
24 sentenced to:

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

18 4. Any person who commits a violation of this section after
19 having been twice convicted of a felony offense pursuant to the
20 provisions of this section or a violation pursuant to the provisions
21 of any law of this state or another state prohibiting the offenses
22 provided for in this section, Section 11-904 of this title or
23 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
24 Oklahoma Statutes, ~~and against whom the district attorney seeks to~~

1 ~~enhance punishment,~~ shall be guilty of a felony and participate in
2 an assessment and evaluation pursuant to subsection G of this
3 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 followed by not less than one (1) year of supervision
7 and periodic testing at the defendant's expense, four
8 hundred eighty (480) hours of community service, and
9 use of an ignition interlock device, as provided by
10 subparagraph n of paragraph 1 of subsection A of
11 Section 991a of Title 22 of the Oklahoma Statutes, for
12 a minimum of thirty (30) days, 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 twenty (20) years and a fine of not more than
16 Five 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 person does not undergo residential or inpatient
21 treatment pursuant to subsection G of this section the person shall
22 serve a term of imprisonment of at least ten (10) days.

23 5. Any person who, after a previous conviction of a violation
24 of murder in the second degree or manslaughter in the first degree

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

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

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

18 D. Any person who is convicted of a violation of driving under
19 the influence with a blood or breath alcohol concentration of
20 fifteen-hundredths (0.15) or more pursuant to this section shall be
21 deemed guilty of aggravated driving under the influence. A person
22 convicted of aggravated driving under the influence shall
23 participate in an assessment and evaluation pursuant to subsection G
24 of this section and shall comply with all recommendations for

1 treatment. Such person shall be sentenced as provided in paragraph
2 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

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
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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 this section, Section 11-904 of this title,
9 or paragraph 4 of subsection A of Section 852.1 of Title 21 of the
10 Oklahoma Statutes, shall constitute a conviction of the offense for
11 the purpose of this section; provided, any deferred judgment shall
12 only be considered to constitute a conviction for a period of ten
13 (10) years following the completion of any court-imposed
14 probationary term.

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

20 1. The results of any standardized field sobriety test
21 including, but not limited to, the horizontal gaze nystagmus (HGN)
22 test administered by a person who has completed training in
23 standardized field sobriety testing; or
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2. Whether a person was under the influence of one or more impairing substances and the category of such impairing substance or substances. A witness who has received training and holds a current certification as a drug recognition expert shall be qualified to give the testimony in any case in which such testimony may be relevant.

SECTION 2. This act shall become effective November 1, 2018.

Passed the Senate the 13th day of March, 2018.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2018.

Presiding Officer of the House
of Representatives