

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2643

By: Roberts (Dustin) of the
House

and

Treat of the Senate

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11 COMMITTEE SUBSTITUTE

12 An Act relating to motor vehicles; amending 47 O.S.
13 2011, Section 11-902, as last amended by Section 18,
14 Chapter 42, O.S.L. 2017 (47 O.S. Supp. 2017, Section
15 11-902), which relates to driving under the influence
16 of alcohol or other intoxicating substance; removing
17 provision to enhance punishment; and declaring an
18 emergency.

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

20 SECTION 1. AMENDATORY 47 O.S. 2011, Section 11-902, as
21 last amended by Section 18, Chapter 42, O.S.L. 2017 (47 O.S. Supp.
22 2017, Section 11-902), is amended to read as follows:

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

1 physical control of a motor vehicle within this state, whether upon
2 public roads, highways, streets, turnpikes, other public places or
3 upon any private road, street, alley or lane which provides access
4 to one or more single or multi-family dwellings, who:

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

9 2. Is under the influence of alcohol;

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

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

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

22 B. The fact that any person charged with a violation of this
23 section is or has been lawfully entitled to use alcohol or a
24 controlled dangerous substance or any other intoxicating substance

1 shall not constitute a defense against any charge of violating this
2 section.

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

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

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

~~this section,~~ shall, upon conviction, be guilty of a felony and shall participate in an assessment and evaluation pursuant to subsection G of this section and shall be sentenced to:

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

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

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

1 shall be guilty of a felony and participate in an assessment and
2 evaluation pursuant to subsection G of this section and shall be
3 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 commits a violation of this section after
22 having been twice convicted of a felony offense pursuant to the
23 provisions of this section or a violation pursuant to the provisions
24 of any law of this state or another state prohibiting the offenses

1 provided for in this section, Section 11-904 of this title or
2 paragraph 4 of subsection A of Section 852.1 of Title 21 of the
3 Oklahoma Statutes, ~~and against whom the district attorney seeks to~~
4 ~~enhance punishment,~~ shall be guilty of a felony and participate in
5 an assessment and evaluation pursuant to subsection G of this
6 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 followed by not less than one (1) year of supervision
10 and periodic testing at the defendant's expense, four
11 hundred eighty (480) hours of community service, and
12 use of an ignition interlock device, as provided by
13 subparagraph n of paragraph 1 of subsection A of
14 Section 991a of Title 22 of the Oklahoma Statutes, for
15 a minimum of thirty (30) days, or
- 16 b. placement in the custody of the Department of
17 Corrections for not less than one (1) year and not to
18 exceed twenty (20) years and a fine of not more than
19 Five Thousand Dollars (\$5,000.00), or
- 20 c. treatment, imprisonment and a fine within the
21 limitations prescribed in subparagraphs a and b of
22 this paragraph.
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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 driving
18 under the influence of alcohol or other intoxicating substance
19 offense within any municipality with a municipal court other than a
20 court of record, the charge shall be presented to the county's
21 district attorney and filed with the district court of the county
22 within which the municipality is located.

23 D. Any person who is convicted of a violation of driving under
24 the influence with a blood or breath alcohol concentration of

1 fifteen-hundredths (0.15) or more pursuant to this section shall be
2 deemed guilty of aggravated driving under the influence. A person
3 convicted of aggravated driving under the influence shall
4 participate in an assessment and evaluation pursuant to subsection G
5 of this section and shall comply with all recommendations for
6 treatment. Such person shall be sentenced as provided in paragraph
7 1, 2, 3, 4 or 5 of subsection C of this section and to:

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

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

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

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

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

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

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

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

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

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

21 H. Any person who is found guilty of a violation of the
22 provisions of this section may be required by the court to attend a
23 victims impact panel program, as defined in subsection H of Section
24 991a of Title 22 of the Oklahoma Statutes, if such a program is

1 offered in the county where the judgment is rendered, and to pay a
2 fee of not less than Fifteen Dollars (\$15.00) nor more than Sixty
3 Dollars (\$60.00) as set by the governing authority of the program
4 and approved by the court to the program to offset the cost of
5 participation by the defendant, if in the opinion of the court the
6 defendant has the ability to pay such fee.

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

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

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

21 L. 1. When a person is eighteen (18) years of age or older,
22 and is the driver, operator, or person in physical control of a
23 vehicle, and is convicted of violating any provision of this section
24 while transporting or having in the motor vehicle any child less

1 than eighteen (18) years of age, the fine shall be enhanced to
2 double the amount of the fine imposed for the underlying driving
3 under the influence (DUI) violation which shall be in addition to
4 any other penalties allowed by this section.

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

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

19 N. If qualified by knowledge, skill, experience, training or
20 education, a witness shall be allowed to testify in the form of an
21 opinion or otherwise solely on the issue of impairment, but not on
22 the issue of specific alcohol concentration level, relating to the
23 following:
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1 1. The results of any standardized field sobriety test
2 including, but not limited to, the horizontal gaze nystagmus (HGN)
3 test administered by a person who has completed training in
4 standardized field sobriety testing; or

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

11 SECTION 2. It being immediately necessary for the preservation
12 of the public peace, health or safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

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16 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/26/2018 - DO PASS,
17 As Amended and Coauthored.
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